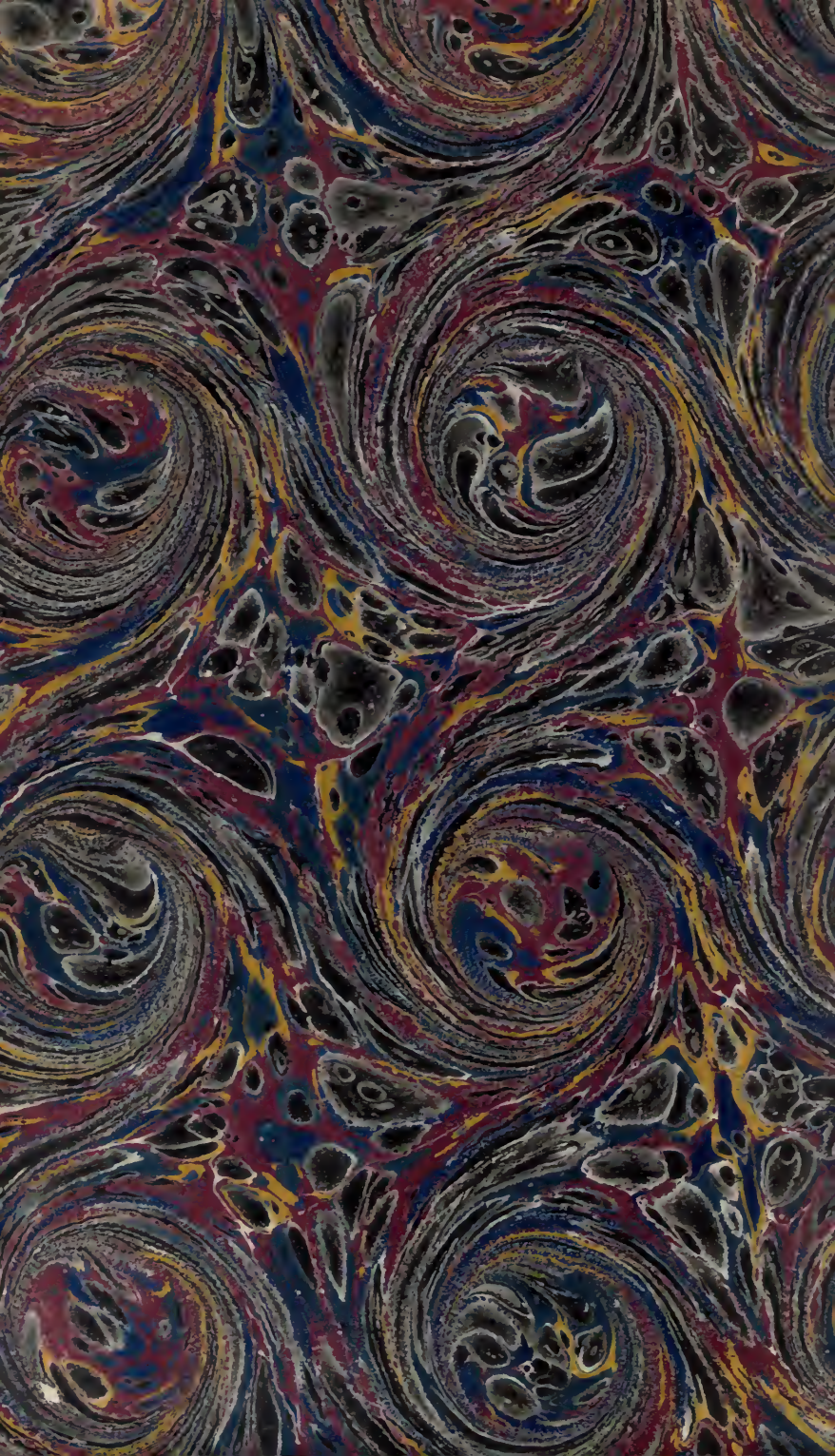

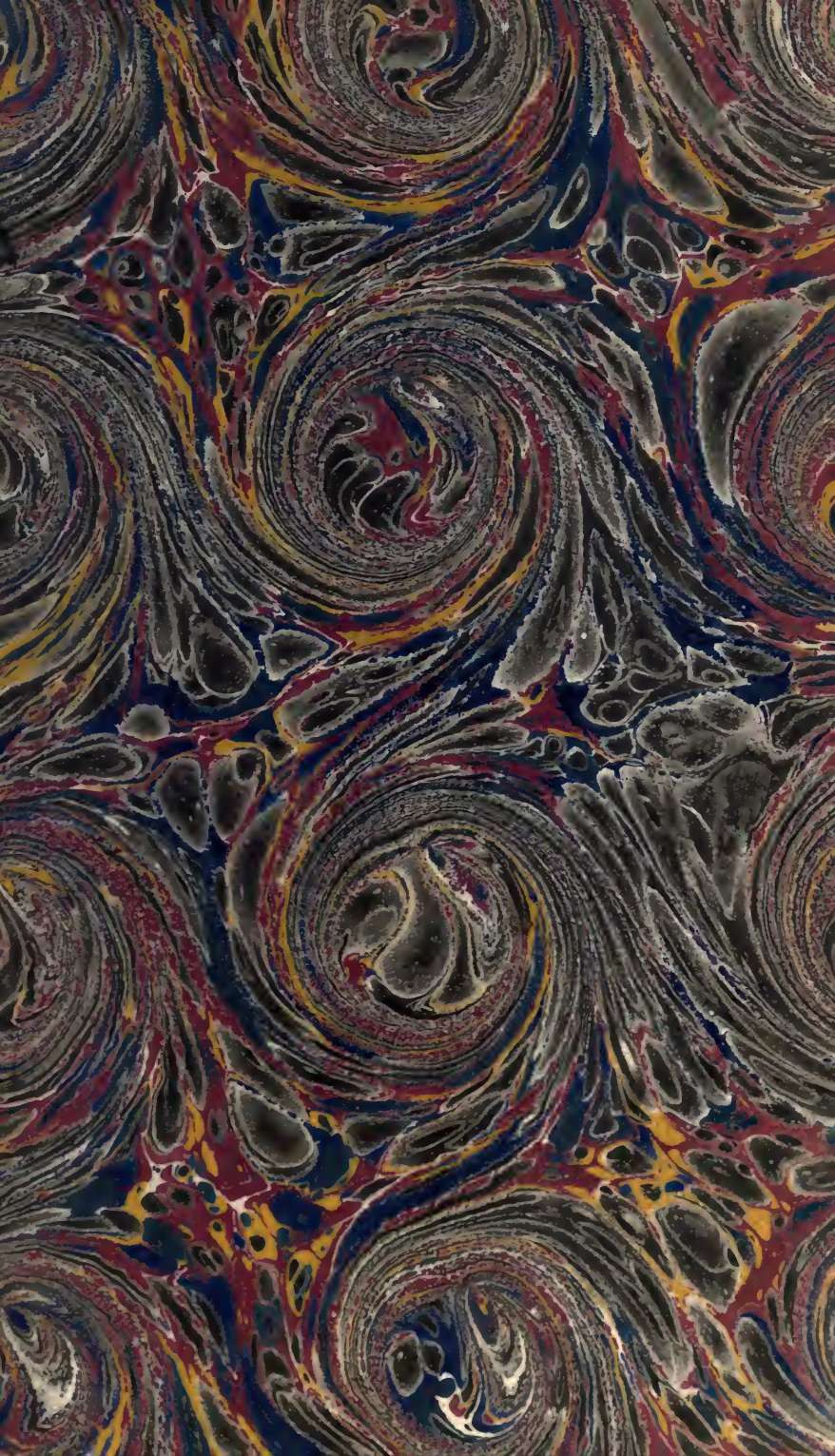

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Charles

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THE

WORKS

OF

WM. ROBERTSON, D.D.

IN EIGHT VOLUMES.

THE FIFTH VOLUME.

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MDCCCXXV.

THE HISTORY

OF

THE REIGN OF THE EMPEROR

CHARLES THE FIFTH.

THE ELEVENTH BOOK.

AS soon as the treaty of Passau was signed, Maurice, in consequence of his engagements with Ferdinand, marched into Hungary, at the head of twenty thousand men. But the great superiority of the Turkish armies, the frequent mutinies, both of the Spanish and German soldiers, occasioned by their want of pay, together with the dissensions between Maurice and Castaldo, who was piqued at being obliged to resign the chief command to him, prevented his performing any thing in that country suitable to his former fame, or of great benefit to the king of the Romans[a].

1552.

Aug. 3. Maurice marches into Hungary against the Turks.

When Maurice set out for Hungary, the prince of Hesse parted from him with the forces under his command, and marched back into his own country, that he might be ready to receive his father upon his return, and give up to him the reins of government which he had held during his absence. But fortune was not yet weary of persecuting the landgrave. A battalion of mercenary troops, which had been in the pay of Hesse, being seduced by Reifenberg their colonel, a soldier of fortune ready to engage in any enterprise, secretly

The landgrave of Hesse recovers his liberty.

[a] Istuanhaffii Hist. Hung. p. 288. Thuan. lib. x. 371.

1552. withdrew from the young prince, as he was marching homewards, and joined Albert of Brandenburg, who still continued in arms against the emperor, refusing to be included in the treaty of Passau. Unhappily for the landgrave, an account of this reached the Netherlands, just as he was dismissed from the citadel of Mechlin, where he had been confined, but before he had got beyond the frontiers of that country. The queen of Hungary, who governed there in her brother's name, incensed at such an open violation of the treaty to which he owed his liberty, issued orders to arrest him, and committed him again to the custody of the same Spanish captain who had guarded him for five years with the most severe vigilance. Philip beheld all the horrours of his imprisonment renewed; and his spirits subsiding in the same proportion as they had risen during the short interval in which he had enjoyed liberty, he sunk into despair, and believed himself to be doomed to perpetual captivity. But the matter being so explained to the emperor, as fully satisfied him that the revolt of Reifenberg's mercenaries could be imputed neither to the landgrave nor to his son, he gave orders for his release; and Philip at last obtained the liberty for which he had so long languished[b]. But though he recovered his freedom, and was reinstated in his dominions, his sufferings seem to have broken the vigour, and to have extinguished the activity of his mind. From being the boldest as well as most enterprising prince in the empire, he became the most timid and cautious, and passed the remainder of his days in a pacific indolence.

Likewise the elector of Saxony.

The degraded elector of Saxony, likewise, procured his liberty in consequence of the treaty of Passau. The emperor having been obliged to relinquish all his schemes for extirpating the protestant religion, had no longer any motive for detaining him a prisoner; and,

[b] Sleid. p. 573. Belcarii Comment. p. 834.

being extremely solicitous, at that juncture, to recover the confidence and good-will of the Germans, whose assistance was essential to the success of the enterprise which he meditated against the king of France, he, among other expedients for that purpose, thought of releasing from imprisonment a prince whose merit entitled him no less to esteem, than his sufferings rendered him the object of compassion. John Frederick took possession accordingly of that part of his territories which had been reserved for him, when Maurice was invested with the electoral dignity. As in this situation he continued to display the same virtuous magnanimity, for which he had been conspicuous in a more prosperous and splendid state, and which he had retained amidst all his sufferings, he maintained during the remainder of his life that high reputation to which he had so just a title. 1552.

The loss of Metz, Toul, and Verdun, had made a deep impression on the emperor. Accustomed to terminate all his operations against France with advantage to himself, he thought that it nearly concerned his honour not to allow Henry the superiority in this war, or to suffer his own administration to be stained with the infamy of having permitted territories of such consequence to be dismembered from the empire. This was no less a point of interest than of honour. As the frontier of Champagne was more naked, and lay more exposed than that of any province in France, Charles had frequently, during his wars with that kingdom, made inroads upon that quarter with great success and effect; but if Henry were allowed to retain his late conquests, France would gain such a formidable barrier on that side, as to be altogether secure, where formerly she had been weakest. On the other hand, the empire had now lost as much, in point of security, as France had acquired; and, being stripped of the defence which those cities afforded it, lay open to be invaded on a quarter, where all the towns, The emperor resolves to make war upon France.

1552. having been hitherto considered as inferior, and remote from any enemy, were but slightly fortified. These considerations determined Charles to attempt recovering the three towns, of which Henry had made himself master; and the preparations which he had made against Maurice and his associates, enabled him to carry his resolution into immediate execution.

His preparations for this purpose.

As soon, then, as the peace was concluded at Passau, he left his inglorious retreat at Villach, and advanced to Augsburg at the head of a considerable body of Germans which he had levied, together with all the troops which he had drawn out of Italy and Spain. To these he added several battalions, which having been in the pay of the confederates, entered into his service when dismissed by them; and he prevailed, likewise, on some princes of the empire to join him with their vassals. In order to conceal the destination of this formidable army, and to guard against alarming the French king, so as to put him on preparing for the defence of his late conquests, he gave out that he was to march forthwith into Hungary, in order to second Maurice in his operations against the infidels. When he began to advance towards the Rhine, and could no longer employ that pretext, he tried a new artifice, and spread a report, that he took this route in order to chastise Albert of Brandenburg, whose cruel exactions in that part of the empire called loudly for his interposition to check them.

The precautions of the French for the defence of Metz.

But the French having grown acquainted, at last, with arts by which they had been so often deceived, viewed all Charles's motions with distrust. Henry immediately discerned the true object of his vast preparations, and resolved to defend the important conquests which he had gained, with vigour equal to that with which they were about to be attacked. As he foresaw that the whole weight of the war would be turned against Metz, by whose fate that of Toul and Verdun would be determined, he nominated Francis

of Lorrain, duke of Guise, to take the command in that city during the siege, the issue of which would equally affect the honour and interest of his country. His choice could not have fallen upon any person more worthy of that trust. The duke of Guise possessed, in an high degree, all the talents of courage, sagacity, and presence of mind, which render men eminent in military command. He was largely endowed with that magnanimity of soul which delights in bold enterprises, and aspires to fame by splendid and extraordinary actions. He repaired with joy to the dangerous station assigned him, as to a theatre on which he might display his great qualities under the immediate eye of his countrymen, all ready to applaud him. The martial genius of the French nobility in that age, which considered it as the greatest reproach to remain inactive, when there was any opportunity of signalizing their courage, prompted great numbers to follow a leader who was the darling as well as the pattern of every one that courted military fame. Several princes of the blood, many noblemen of the highest rank, and all the young officers who could obtain the king's permission, entered Metz as volunteers. By their presence they added spirit to the garrison, and enabled the duke of Guise to employ, on every emergency, persons eager to distinguish themselves, and fit to conduct any service.

1552.

The duke of Guise appointed governor of the town:

But with whatever alacrity the duke of Guise undertook the defence of Metz, he found every thing, upon his arrival there, in such a situation, as might have induced any person of less intrepid courage to despair of defending it with success. The city was of great extent, with large suburbs; the walls were in many places feeble and without ramparts; the ditch narrow; and the old towers, which projected instead of bastions, were at too great distance from each other to defend the space between them. For all these defects he endeavoured to provide the best remedy, which the time would permit. He ordered the suburbs, without

prepares for a vigorous defence.

1552. sparing the monasteries or churches, not even that of St. Arnulph, in which several kings of France had been buried, to be levelled with the ground; but in order to guard against the imputation of impiety, to which such a violation of so many sacred edifices, as well as of the ashes of the dead, might expose him, he executed this with much religious ceremony. Having ordered all the holy vestments and utensils, together with the bones of the kings and other persons deposited in these churches, to be removed, they were carried, in solemn procession, to a church within the walls, he himself walking before them bare-headed, with a torch in his hand. He then pulled down such houses as stood near the walls, cleared and enlarged the ditch, repaired the ruinous fortifications, and erected new ones. As it was necessary that all these works should be finished with the utmost expedition, he laboured at them with his own hands; the officers and volunteers imitated his example; and the soldiers submitted with cheerfulness to the most severe and fatiguing service, when they saw that their superiors did not decline to bear a part in it. At the same time he compelled all useless persons to leave the place; he filled the magazines with provisions and military stores; he burnt the mills and destroyed the corn and forage for several miles round the town. Such were his popular talents, as well as his arts of acquiring an ascendant over the minds of men, that the citizens seconded him with no less ardour than the soldiers; and every other passion being swallowed up in the zeal to repulse the enemy, with which he inspired them, they beheld the ruin of their estates, together with the havoc which he made among their public and private buildings, without any emotion of resentment[c].

Charles advances towards Metz:

Meantime, the emperor, having collected all his forces, continued his march towards Metz. As he

[c] Thuan. xi. p. 387.

passed through the cities on the Rhine, he saw the dismal effects of that licentious and wasteful war which Albert had carried on in these parts. Upon his approach, that prince, though at the head of twenty thousand men, withdrew into Lorrain, as if he had intended to join the French king, whose arms he had quartered with his own in all his standards and ensigns. Albert was not in a condition to cope with the imperial troops[d], which amounted at least to sixty thousand men, forming one of the most numerous and best-appointed armies which had been brought into the field during that age, in any of the wars among christian princes. 1552.

The chief command, under the emperor, was committed to the duke of Alva, assisted by the marquis de Marignano, together with the most experienced of the Italian and Spanish generals. As it was now towards the end of October, these intelligent officers represented the great danger of beginning, at such an advanced season, a siege which could not fail to prove very tedious. But Charles adhered to his own opinion with his usual obstinacy; and being confident that he had made such preparations, and taken such precautions, as would ensure success, he ordered the city to be invested. As soon as the duke of Alva appeared, a large body of the French sallied out and attacked his vanguard with great vigour, put it in confusion, and killed or took prisoners a considerable number of men. By this early specimen which they gave of the conduct of their officers, as well as the valour of their troops, they showed the imperialists what an enemy they had to encounter, and how dear every advantage must cost them. The place, however, was completely invested, the trenches were opened, and the other works begun. invests the town. Oct. 19.

The attention both of the besiegers and besieged

[d] Natal. Comitis Hist. p. 127.

1552. was turned, for some time, towards Albert of Brandenburg, and they strove with emulation which should gain that prince, who still hovered in the neighbourhood, fluctuating in all the uncertainty of irresolution, natural to a man who, being swayed by no principle, was allured different ways by contrary views of interest. The French tempted him with offers extremely beneficial; the imperialists scrupled at no promise which they thought might allure him. After much hesitation he was gained by the emperor, from whom he expected to receive advantages, which were both more immediate and more permanent. As the French king, who began to suspect his intentions, had appointed a body of troops under the duke of Aumale, brother to the duke of Guise, to watch his motions, Albert fell upon them unexpectedly with such vigour, that he routed them entirely, killed many of the officers, wounded Aumale himself, and took him prisoner. Immediately after this victory, he marched in triumph to Metz, and joined his army to that of the emperor. Charles, in reward for this service, and the great accession of strength which he brought him, granted Albert a formal pardon of all past offences, and confirmed him in the possession of the territories which he had violently usurped during the war[e].

Both parties endeavour to gain Albert of Brandenburg.

Nov. 4.

The gallant behaviour of the duke of Guise and his garrison.

The duke of Guise, though deeply affected with his brother's misfortune, did not remit, in any degree, the vigour with which he defended the town. He harassed the besiegers by frequent sallies, in which his officers were so eager to distinguish themselves, that his authority being hardly sufficient to restrain the impetuosity of their courage, he was obliged, at different times, to shut the gates, and to conceal the keys, in order to prevent the princes of the blood, and noblemen of the first rank, from exposing themselves to danger in every sally. He repaired in the night what

[e] Sleid. p. 575. Thuan. lib. xi. 389. 392.

the enemy's artillery had beat down during the day, or erected behind the ruined works new fortifications of almost equal strength. The imperialists, on their part, pushed on the attack with great spirit, and carried forward, at once, approaches against different parts of the town. But the art of attacking fortified places was not then arrived at that degree of perfection to which it was carried towards the close of the sixteenth century, during the long war in the Netherlands. The besiegers, after the unwearied labour of many weeks, found that they had made but little progress; and although their batteries had made breaches in different places, they saw, to their astonishment, works suddenly appear, in demolishing which their fatigues and dangers would be renewed. The emperor, enraged at the obstinate resistance which his army met with, left Thionville, where he had been confined by a violent fit of the gout; and though still so infirm that he was obliged to be carried in a litter, he repaired to the camp, that, by his presence, he might animate the soldiers, and urge on the attack with greater spirit. Upon his arrival, new batteries were erected, and new efforts were made with redoubled ardour. 1552. Nov. 26.

But, by this time, winter had set in with great rigour; the camp was alternately deluged with rain or covered with snow; at the same time provisions were become extremely scarce, as a body of French cavalry, which hovered in the neighbourhood, often interrupted the convoys, or rendered their arrival difficult and uncertain. Diseases began to spread among the soldiers, especially among the Italians and Spaniards, unaccustomed to such inclement weather; great numbers were disabled from serving, and many died. At length, such breaches were made as seemed practicable, and Charles resolved to hazard a general assault, in spite of all the remonstrances of his generals against the imprudence of attacking a numerous garrison, con- The distress of the imperial army.

1552. ducted and animated by the most gallant of the French nobility, with an army weakened by diseases and disheartened with ill success. The duke of Guise, suspecting the emperor's intentions from the extraordinary movements which he observed in the enemy's camp, ordered all his troops to their respective posts. They appeared immediately on the walls, and behind the breaches, with such a determined countenance, so eager for the combat and so well prepared to give the assailants a warm reception, that the imperialists, instead of advancing to the charge when the word of command was given, stood motionless in a timid dejected silence. The emperor perceiving that he could not trust troops whose spirits were so much broken, retired abruptly to his quarters, complaining that he was now deserted by his soldiers, who deserved no longer the name of men [f].

The emperor changes the method of attack.

Deeply as this behaviour of his troops mortified and affected Charles, he would not hear of abandoning the siege, though he saw the necessity of changing the method of attack. He suspended the fury of his batteries, and proposed to proceed by the more secure but tedious method of sapping. But as it still continued to rain or to snow almost incessantly, such as were employed in this service endured incredible hardships; and the duke of Guise, whose industry was not inferior to his valour, discovering all their mines, counterworked them, and prevented their effect. At last, Charles finding it impossible to contend any longer with the severity of the season, and with enemies whom he could neither overpower by force, nor subdue by art, while, at the same time, a contagious distemper raged among his troops, and cut off daily great numbers of the officers as well as soldiers, yielded to the solicitations of his generals, who conjured him to save the remains of his army by a timely

[f] Thuan. p. 397.

retreat: "Fortune," says he, "I now perceive, resembles other females, and chooses to confer her favours on young men, while she turns her back on those who are advanced in years." 1552.

Upon this, he gave orders immediately to raise the siege, and submitted to the disgrace of abandoning the enterprise, after having continued fifty-six days before the town, during which time he had lost upwards of thirty thousand men, who died of diseases, or were killed by the enemy. The duke of Guise, as soon as he perceived the intention of the imperialists, sent out several bodies both of cavalry and infantry to infest their rear, to pick up stragglers, and to seize every opportunity of attacking them with advantage. Such was the confusion with which they made their retreat, that the French might have harassed them in the most cruel manner. But when they sallied out, a spectacle presented itself to their view, which extinguished at once all hostile rage, and melted them into tenderness and compassion. The imperial camp was filled with the sick and wounded, with the dead and the dying. In all the different roads by which the army retired, numbers were found, who, having made an effort to escape beyond their strength, were left, when they could go no farther, to perish without assistance. This they received from their enemies, and were indebted to them for all the kind offices which their friends had not the power to perform. The duke of Guise immediately ordered proper refreshments for such as were dying of hunger; he appointed surgeons to attend the sick and wounded; he removed such as could bear it into the adjacent villages; and those who would have suffered by being carried so far, he admitted into the hospitals which he had fitted up in the city for his own soldiers. As soon as they recovered, he sent them home under an escort of soldiers, and with money to bear their charges. By these acts of humanity, which were uncommon in that

Dec. 26. Obliged to raise the siege.

Ruin of the imperial army and humanity of the French.

1552. age, when war was carried on with greater rancour and ferocity than at present, the duke of Guise completed the fame which he had acquired by his gallant and successful defence of Metz, and engaged those whom he had vanquished to vie with his own countrymen in extolling his name [g].

Bad situation of the emperor's affairs in Italy.

To these calamities in Germany, were added such unfortunate events in Italy, as rendered this the most disastrous year in the emperor's life. During his residence at Villach, Charles had applied to Cosmo de' Medici for the loan of two hundred thousand crowns. But his credit, at that time, was so low, that, in order to obtain this inconsiderable sum, he was obliged to put him in possession of the principality of Piombino; and, by giving up that, he lost the footing which he had hitherto maintained in Tuscany, and enabled Cosmo to assume, for the future, the tone and deportment of a prince altogether independent. Much about the time that his indigence constrained him to part with this valuable territory, he lost Siena, which was of still greater consequence, through the ill conduct of don Diego de Mendoza [h].

The revolt of Siena.

Siena, like most of the great cities in Italy, had long enjoyed a republican government, under the protection of the empire; but being torn in pieces by the dissensions between the nobility and the people, which divided all the Italian commonwealths, the faction of the people, which gained the ascendant, besought the emperor to become the guardian of the administration which they had established, and admitted into their city a small body of Spanish soldiers, whom he had sent to countenance the execution of the laws, and to preserve tranquillity among them. The command of these troops was given to Mendoza, at that time am-

[g] Sleid. p. 575. Thuan. lib. xi. 389, etc. Père Daniel, Hist. de France, tom. iii. 392. Père Daniel's account of this siege is taken from the journal of the sieur de Salignac, who was present. Natal. Comit. Hist. p. 129.

[h] Thuan. lib. xi. 376.

bassador for the emperor at Rome, who persuaded the credulous multitude, that it was necessary for their security against any future attempt of the nobles, to allow him to build a citadel in Siena; and, as he flattered himself that, by means of this fortress, he might render the emperor master of the city, he pushed on the works with all possible despatch. But he threw off the mask too soon. Before the fortifications were completed, he began to indulge his natural haughtiness and severity of temper, and to treat the citizens with great insolence. At the same time the soldiers in garrison, being paid as irregularly as the emperor's troops usually were, lived almost at discretion upon the inhabitants, and were guilty of many acts of license and oppression. 1552.

The Sienese court the assistance of France.

These injuries awakened the Sienese to a sense of their danger. As they saw the necessity of exerting themselves, while the unfinished fortifications of the citadel left them any hopes of success, they applied to the French ambassador at Rome, who readily promised them his master's protection and assistance. At the same time, forgetting their domestic animosities when such a mortal blow was aimed at the liberty and existence of the republic, they sent agents to the exiled nobles, and invited them to concur with them in saving their country from the servitude with which it was threatened. As there was not a moment to lose, measures were concerted speedily, but with great prudence; and were executed with equal vigour. The citizens rose suddenly in arms; the exiles flocked into the town from different parts with all their partisans, and what troops they could draw together; and several bodies of mercenaries in the pay of France appeared to support them. The Spaniards, though surprised, and much inferior in number, defended themselves with great courage; but, seeing no prospect of relief, and having no hopes of maintaining their station long in a half-finished fortress, they soon gave it up.

1552. The Sienese, with the utmost alacrity, levelled it with the ground, that no monument might remain of that odious structure, which had been raised in order to enslave them. At the same time, renouncing all connexion with the emperor, they sent ambassadors to thank the king of France as the restorer of their liberty, and to entreat that he would secure to them the perpetual enjoyment of that blessing, by continuing his protection to their republic[i].

Descent of the Turks in the kingdom of Naples.

To these misfortunes, one still more fatal had almost succeeded. The severe administration of don Pedro de Toledo, viceroy of Naples, having filled that kingdom with murmuring and disaffection, the prince of Salerno, the head of the malecontents, had fled to the court of France, where all who bore ill-will to the emperor or his ministers were sure of finding protection and assistance. That nobleman, in the usual style of exiles, boasting much of the number and power of his partisans, and of his great influence with them, prevailed on Henry to think of invading Naples, from an expectation of being joined by all those with whom the prince of Salerno held correspondence, or who were dissatisfied with Toledo's government. But though the first hint of this enterprise was suggested by the prince of Salerno, Henry did not choose that its success should entirely depend upon his being able to fulfil the promises which he had made. He applied for aid to Solyman, whom he courted, after his father's example, as his most vigorous auxiliary against the emperor, and solicited him to second his operations, by sending a powerful fleet into the Mediterranean. It was not difficult to obtain what he requested of the sultan, who, at this time, was highly incensed against the house of Austria, on account of the proceedings in Hungary. He ordered an hundred and fifty ships

[i] Pecci, Memorie di Sienna, vol. iii. 230. 261. Thuan. p. 375. 377, etc. Paruta, Hist. Venet. p. 267. Mém. de Ribier, p. 424, etc.

to be equipped, that they might sail towards the coast of Naples, at whatever time Henry should name, and might cooperate with the French troops in their attempts upon that kingdom. The command of this fleet was given to the corsair Dragut, an officer trained up under Barbarossa, and scarcely inferior to his master in courage, in talents, or in good fortune. He appeared on the coast of Calabria at the time which had been agreed on, landed at several places, plundered and burnt several villages; and, at last, casting anchor in the bay of Naples, filled that city with consternation. But as the French fleet, detained by some accident, which the contemporary historians have not explained, did not join the Turks according to concert, they, after waiting twenty days without hearing any tidings of it, set sail for Constantinople, and thus delivered the viceroy of Naples from the terrour of an invasion, which he was not in a condition to have resisted[k]. 1552.

As the French had never given so severe a check to the emperor in any former campaign, they expressed immoderate joy at the success of their arms. Charles himself, accustomed to a long series of prosperity, felt the calamity most sensibly, and retired from Metz into the Low Countries, much dejected with the cruel reverse of fortune which affected him in his declining age, when the violence of the gout had increased to such a pitch, as entirely broke the vigour of his constitution, and rendered him peevish, difficult of access, and often incapable of applying to business. But, whenever he enjoyed any interval of ease, all his thoughts were bent on revenge; and he deliberated, with the greatest solicitude, concerning the most proper means of annoying France, and of effacing the stain which had obscured the reputation and glory of his arms. All the schemes concerning Germany, 1553. The emperor sensibly affected with the state of his affairs.

[k] Thuan. p. 375. 380. Mém. de Ribier, ii. p. 403. Giannone.

1553. which had engrossed him so long, being disconcerted by the peace of Passau, the affairs of the empire became only secondary objects of attention; and enmity to France was the predominant passion which chiefly occupied his mind.

The violent proceedings of Albert of Brandenburg.

The turbulent ambition of Albert of Brandenburg excited violent commotions, which disturbed the empire during this year. That prince's troops, having shared in the calamities of the siege of Metz, were greatly reduced in number. But the emperor, prompted by gratitude for his distinguished services on that occasion, or, perhaps, with a secret view of fomenting divisions among the princes of the empire, having paid up all the money due to him, he was enabled, with that sum, to hire so many of the soldiers dismissed from the imperial army, that he was soon at the head of a body of men as numerous as ever. The bishops of Bamberg and Wurtzburg having solicited the imperial chamber to annul, by its authority, the iniquitous conditions which Albert had compelled them to sign, that court unanimously found all their engagements with him to be void in their own nature, because they had been extorted by force; enjoined Albert to renounce all claim to the performance of them; and, if he should persist in such an unjust demand, exhorted all the princes of the empire to take arms against him as a disturber of the public tranquillity. To this decision, Albert opposed the confirmation of his transactions with the two prelates, which the emperor had granted him as the reward of his having joined the imperial army at Metz; and in order to intimidate his antagonists, as well as to convince them of his resolution not to relinquish his pretensions, he put his troops in motion, that he might secure the territory in question. Various endeavours were employed, and many expedients proposed, in order to prevent the kindling of a new war in Germany. But the same warmth of temper which rendered Albert

turbulent and enterprising, inspiring him with the most sanguine hopes of success, even in his wildest undertakings, he disdainfully rejected all reasonable overtures of accommodation. 1553.

He is condemned by the imperial chamber.

Upon this, the imperial chamber issued its decree against him, and required the elector of Saxony, together with several other princes mentioned by name, to take arms in order to carry it into execution. Maurice, and those associated with him, were not unwilling to undertake this service. They were extremely solicitous to maintain public order by supporting the authority of the imperial chamber, and saw the necessity of giving a timely check to the usurpations of an ambitious prince, who had no principle of action but regard to his own interest, and no motive to direct him but the impulse of ungovernable passions. They had good reason to suspect, that the emperor encouraged Albert in his extravagant and irregular proceedings, and secretly afforded him assistance, that, by raising him up to rival Maurice in power, he might, in any future broil, make use of his assistance to counterbalance and control the authority which the other had acquired in the empire[1].

April 2. A confederacy formed against him, of which Maurice was head.

These considerations united the most powerful princes in Germany in a league against Albert, of which Maurice was declared generalissimo. This formidable confederacy, however, wrought no change in Albert's sentiments; but as he knew that he could not resist so many princes, if he should allow them time to assemble their forces, he endeavoured, by his activity, to deprive them of all the advantages which they might derive from their united power and numbers; and, for that reason, marched directly against Maurice, the enemy whom he dreaded most. It was happy for the allies that the conduct of their affairs

[1] Sleid. p. 585. Mém. de Ribier, ii. p. 442. Arnoldi Vita Maurit. ap. Menken, ii. p. 1242.

1553. was committed to a prince of such abilities. He, by his authority and example, had inspired them with vigour; and having carried on their preparations with a degree of rapidity, of which confederate bodies are seldom capable, he was in a condition to face Albert before he could make any considerable progress.

He attacks Albert, Their armies, which were nearly equal in number, each consisting of twenty-four thousand men, met at Sieverhausen, in the dutchy of Lunenburg; and the violent animosity against each other, which possessed the two leaders, did not suffer them to continue long

June 9. inactive. The troops, inflamed with the same hostile rage, marched fiercely to the combat; they fought with the greatest obstinacy; and as both generals were capable of availing themselves of every favourable occurrence, the battle remained long doubtful,

and defeats his army; each gaining ground upon the other alternately. At last victory declared for Maurice, who was superior in cavalry, and Albert's army fled in confusion, leaving four thousand dead on the field, and their camp, baggage, and artillery, in the hands of the conquerors. The allies bought their victory dear; their best troops suffered greatly; two sons of the duke of Brunswick, a duke of Lunenburg, and many other persons of dis-

but is killed in the battle. tinction, were among the number of the slain[m]. But all these were soon forgotten; for Maurice himself, as he led up to a second charge a body of horse which had been broken, received a wound with a pistol-bullet in the belly, of which he died two days after the battle, in the thirty-second year of his age, and in the sixth after his attaining the electoral dignity.

His character. Of all the personages who have appeared in the history of this active age, when great occurrences and sudden revolutions called forth extraordinary talents to view, and afforded them full opportunity to display

[m] Historia Pugnæ infelicis inter Maurit. et Albert. Thom. Wintzero auctore, apud Scard. ii. p. 559. Sleid. p. 583. Ruscelli, Epistres aux Princes, p. 154. Arnoldi Vita Maurit. p. 1245.

themselves, Maurice may justly be considered as the most remarkable. If his exorbitant ambition, his profound dissimulation, and his unwarrantable usurpation of his kinsman's honours and dominions, exclude him from being praised as a virtuous man; his prudence in concerting his measures, his vigour in executing them, and the uniform success with which they were attended, entitle him to the appellation of a great prince. At an age, when impetuosity of spirit commonly predominates over political wisdom, when the highest effort even of a genius of the first order is to fix on a bold scheme, and to execute it with promptitude and courage, he formed and conducted an intricate plan of policy, which deceived the most artful monarch in Europe. At the very juncture when the emperor had attained to almost unlimited despotism, Maurice, with power seemingly inadequate to such an undertaking, compelled him to relinquish all his usurpations, and established not only the religious but civil liberties of Germany on such foundations as have hitherto remained unshaken. Although, at one period of his life, his conduct excited the jealousy of the protestants, and at another drew on him the resentment of the Roman catholics, such was his masterly address, that he was the only prince of the age, who, in any degree, possessed the confidence of both, and whom both lamented as the most able as well as faithful guardian of the constitution and laws of his country. 1553.

The consternation which Maurice's death occasioned among his troops, prevented them from making the proper improvement of the victory which they had gained. Albert, whose active courage and profuse liberality rendered him the darling of such military adventurers as were little solicitous about the justice of his cause, soon reassembled his broken forces, and made fresh levies, with such success that he was quickly at the head of fifteen thousand men, and renewed his depredations with additional fury. But Albert continues the war.

1553. Henry of Brunswick, having taken the command of the allied troops, defeated him in a second battle
Sept. 12. scarcely less bloody than the former. Even then his courage did not sink, nor were his resources exhausted. He made several efforts, and some of them very vigorous, to retrieve his affairs: but, being laid under the ban of the empire by the imperial chamber; being driven by degrees out of all his hereditary territories, as well as those which he had usurped; being forsaken by many of his officers, and overpowered by
He is driven out of Germany. the number of his enemies, he fled for refuge into France. After having been, for a considerable time, the terrour and scourge of Germany, he lingered out some years in an indigent and dependent state of exile, the miseries of which his restless and arrogant spirit endured with the most indignant impatience.
Jan. 12, 1557. Upon his death without issue, his territories, which had been seized by the princes who took arms against him, were restored, by a decree of the emperor, to his collateral heirs of the house of Brandenburg[n].

Maurice's brother Augustus succeeds him in the electoral dignity. Maurice, having left only one daughter, who was afterwards married to William, prince of Orange, by whom she had a son who bore his grandfather's name, and inherited the great talents for which he was conspicuous, a violent dispute arose concerning the succession to his honours and territories. John Frederick, the degraded elector, claimed the electoral dignity, and that part of his patrimonial estate, of which he had been violently stripped after the Smalkaldic war. Augustus, Maurice's only brother, pleaded his right not only to the hereditary possessions of their family, but to the electoral dignity, and to the territories which Maurice had acquired. As Augustus was a prince of considerable abilities, as well as of great candour and gentleness of manners, the states of Saxony, forgetting the merits and sufferings of their former master, de-

[n] Sleid. p. 592. 594. 599. Struv. Corp. Hist. Germ. p. 1075.

clared warmly in his favour. His pretensions were powerfully supported by the king of Denmark, whose daughter he had married, and zealously espoused by the king of the Romans, out of regard to Maurice's memory. The degraded elector, though secretly favoured by his ancient enemy, the emperor, was at last obliged to relinquish his claim, upon obtaining a small addition to the territories which had been allotted to him, together with a stipulation securing to his family the eventual succession, upon a failure of male heirs in the Albertine line. That unfortunate but magnanimous prince died next year, soon after ratifying this treaty of agreement; and the electoral dignity is still possessed by the descendants of Augustus[o]. 1553.

During these transactions in Germany, war was carried on in the Low Countries with considerable vigour. The emperor, impatient to efface the stain which his ignominious repulse at Metz left upon his military reputation, had an army early in the field, and laid siege to Terouenne. Though the town was of such importance that Francis used to call it one of the two pillows on which a king of France might sleep with security, the fortifications were in bad repair: Henry, trusting to what had happened at Metz, thought nothing more was necessary to render all the efforts of the enemy abortive, than to reinforce the garrison with a considerable number of the young nobility. But Dessé, a veteran officer who commanded them, being killed, and the imperialists pushing the siege with great vigour and perseverance, the place was taken by assault. That it might not fall again into the hands of the French, Charles ordered not only the fortifications but the town itself to be razed, and the inhabitants to be dispersed in the adjacent cities. Elated with this success, the imperialists immediately invested Hesden, Hostilities in the Low Countries. June 21.

[o] Sleid. p. 587. Thuan. p. 409. Struv. Corp. Hist. Germ.

1553. which, though defended with great bravery, was likewise taken by assault, and such of the garrison as escaped the sword were made prisoners. The emperor intrusted the conduct of this siege to Emanuel Philibert of Savoy, prince of Piedmont, who, on that occasion, gave the first display of those great talents for military command, which soon entitled him to be ranked among the first generals of the age, and facilitated his reestablishment in his hereditary dominions, the greater part of which, having been overrun by Francis in his expeditions into Italy, were still retained by Henry[p].

The progress of the imperialists disquiets the French king.

The loss of these towns, together with so many persons of distinction, either killed or taken by the enemy, was no inconsiderable calamity to France, and Henry felt it very sensibly; but he was still more mortified at the emperor's having recovered his wonted superiority in the field so soon after the blow at Metz, which the French had represented as fatal to his power. He was ashamed, too, of his own remissness and excessive security at the opening of the campaign; and, in order to repair that errour, he assembled a numerous army, and led it into the Low Countries.

Roused at the approach of such a formidable enemy, Charles left Brussels, where he had been shut up so closely during seven months, that it came to be believed in many parts of Europe that he was dead; and though he was so much debilitated by the gout, that he could hardly bear the motion of a litter, he hastened to join his army. The eyes of all Europe were turned with expectation towards those mighty and exasperated rivals, between whom a decisive battle was now thought unavoidable. But Charles having prudently declined to hazard a general engagement, and the violence of the autumnal rains rendering it impossible for the

[p] Thuan. p. 411. Haræi Annales Brabant. p. 669.

French to undertake any siege, they retired, without having performed any thing suitable to the great preparations which they had made[q]. 1553.

The imperialists unsuccessful in Italy.

The imperial arms were not attended with the same success in Italy. The narrowness of the emperor's finances seldom allowed him to act with vigour in two different places at the same time; and having exerted himself to the utmost in order to make a great effort in the Low Countries, his operations on the other side of the Alps were proportionably feeble. The viceroy of Naples, in conjunction with Cosmo de' Medici, who was greatly alarmed at the introduction of French troops into Siena, endeavoured to become master of that city. But, instead of reducing the Sienese, the imperialists were obliged to retire abruptly, in order to defend their own country, upon the appearance of the Turkish fleet, which threatened the coast of Naples; and the French not only established themselves more firmly in Tuscany, but, by the assistance of the Turks, conquered a great part of the island of Corsica, subject, at that time, to the Genoese[r].

and in Hungary.

The affairs of the house of Austria declined no less in Hungary during the course of this year. As the troops which Ferdinand kept in Transylvania received their pay very irregularly, they lived almost at discretion upon the inhabitants; and their insolence and rapaciousness greatly disgusted all ranks of men, and alienated them from their new sovereign, who, instead of protecting, plundered his subjects. Their indignation at this, added to their desire of revenging Martinuzzi's death, wrought so much upon a turbulent nobility, impatient of injury, and upon a fierce people, prone to change, that they were ripe for a revolt. At that very juncture, their late queen, Isabella, together with her son, appeared in Transylvania. Her ambitious mind could not bear the solitude and inactivity

[q] Haræus, p. 672. Thuan. p. 414.

[r] Thuan. p. 417.

1553. of a private life; and repenting quickly of the cession which she had made of the crown, in the year one thousand five hundred and fifty-one, she left the place of her retreat, hoping that the dissatisfaction of the Hungarians with the Austrian government would prompt them once more to recognise her son's right to the crown. Some noblemen of great eminence declared immediately in his favour. The bashà of Belgrade, by Solyman's order, espoused his cause, in opposition to Ferdinand; the Spanish and German soldiers, instead of advancing against the enemy, mutinied for want of pay, declaring that they would march back to Vienna; so that Castaldo, their general, was obliged to abandon Transylvania to Isabella and the Turks, and to place himself at the head of the mutineers, that, by his authority, he might restrain them from plundering the Austrian territories through which they passed[s].

Ferdinand obliged to abandon Transylvania.

Solyman's domestic distresses.

Ferdinand's attention was turned so entirely towards the affairs of Germany, and his treasures so much exhausted by his late efforts in Hungary, that he made no attempt to recover this valuable province, although a favourable opportunity for that purpose presented itself, as Solyman was then engaged in a war with Persia, and involved besides in domestic calamities which engrossed and disturbed his mind. Solyman, though distinguished by many accomplishments from the other Ottoman princes, had all the passions peculiar to that violent and haughty race. He was jealous of his authority, sudden as well as furious in his anger, and susceptible of all that rage and love, which reigns in the east, and often produces the wildest and most tragical effects. His favourite mistress was a Circassian slave of exquisite beauty, who bore him a son called Mustapha, whom, both on account of his birthright and his merit, he destined to be the heir of his crown. Roxalana, a Russian captive, soon supplanted

[s] Thuan. p. 430.

the Circassian, and gained the sultan's heart. Having the address to retain the conquest which she had made, she kept possession of his love without any rival for many years, during which she brought him several sons and one daughter. All the happiness, however, which she derived from the unbounded sway that she had acquired over a monarch whom one half of the world revered or dreaded, was imbittered by perpetual reflections on Mustapha's accession to the throne, and the certain death of her sons, who, she foresaw, would be immediately sacrificed, according to the barbarous jealousy of Turkish policy, to the safety of the new emperor. By dwelling continually on this melancholy idea, she came gradually to view Mustapha as the enemy of her children, and to hate him with more than a step-mother's ill-will. This prompted her to wish his destruction, in order to secure for one of her own sons the throne which was destined for him. Nor did she want either ambition to attempt such an high enterprise, or the arts requisite for carrying it into execution. Having prevailed on the sultan to give her only daughter in marriage to Rustan, the grand vizier, she disclosed her scheme to that crafty minister, who, perceiving that it was his own interest to cooperate with her, readily promised his assistance towards aggrandizing that branch of the royal line, to which he was now so nearly allied. 1553. The tragical history of his son Mustapha.

As soon as Roxalana had concerted her measures with this able confidant, she began to affect a wonderful zeal for the mahometan religion, to which Solyman was superstitiously attached, and proposed to found and endow a royal mosque, a work of great expense, but deemed by the Turks meritorious in the highest degree. The mufti, whom she consulted, approved much of her pious intention; but, having been gained and instructed by Rustan, told her, that she being a slave, could derive no benefit herself from that holy deed, for all the merit of it would accrue to Solyman,

1553. the master whose property she was. Upon this she seemed to be overwhelmed with sorrow, and to sink into the deepest melancholy, as if she had been disgusted with life and all its enjoyments. Solyman, who was absent with the army, being informed of this dejection of mind, and of the cause from which it proceeded, discovered all the solicitude of a lover to remove it, and, by a writing under his hand, declared her a free woman. Roxalana, having gained this point, proceeded to build the mosque, and reassumed her usual gaiety of spirit. But when Solyman, on his return to Constantinople, sent an eunuch, according to the custom of the seraglio, to bring her to partake of his bed, she, seemingly with deep regret, but in the most peremptory manner, declined to follow the eunuch, declaring that what had been an honour to her while a slave, became a crime, as she was now a free woman, and that she would not involve either the sultan or herself in the guilt that must be contracted by such an open violation of the law of their prophet. Solyman, whose passion this difficulty, as well as the affected delicacy which gave rise to it, heightened and inflamed, had recourse immediately to the mufti for his direction. He replied, agreeably to the koran, that Roxalana's scruples were well-founded; but added, artfully, in words which Rustan had taught him to use, that it was in the sultan's power to remove these difficulties, by espousing her as his lawful wife. The amorous monarch closed eagerly with the proposal, and solemnly married her, according to the form of the mahometan ritual; though, by so doing, he disregarded a maxim of policy which the pride of the Ottoman blood had taught all the sultans, since Bajazet the first, to consider as inviolable. From his time none of the Turkish monarchs had married, because, when he was vanquished and taken prisoner by Tamerlane, his wife had been abused with barbarous insolence by the Tartars. That no similar cala-

mity might again subject the Ottoman family to the same disgrace, the sultans admitted none to their beds but slaves, whose dishonour could not bring any such stain upon their house. 1553.

But the more uncommon the step was, the more it convinced Roxalana of the unbounded influence which she had acquired over the sultan's heart; and emboldened her to prosecute, with greater hope of success, the scheme that she had formed in order to destroy Mustapha. This young prince having been intrusted by his father, according to the practice of the sultans in that age, with the government of several different provinces, was, at that time, invested with the administration in Diarbequir, the ancient Mesopotamia, which Solyman had wrested from the Persians, and added to his empire. In all these different commands, Mustapha had conducted himself with such cautious prudence as could give no offence to his father, though, at the same time, he governed with so much moderation as well as justice, and displayed such valour and generosity, as rendered him equally the favourite of the people and the darling of the soldiery.

There was no room to lay any folly or vice to his charge, that could impair the high opinion which his father entertained of him. Roxalana's malevolence was more refined; she turned his virtues against him, and made use of these as engines for his destruction. She often mentioned, in Solyman's presence, the splendid qualities of his son; she celebrated his courage, his liberality, his popular arts, with malicious and exaggerated praise. As soon as she perceived that the sultan heard these encomiums, which were often repeated, with uneasiness; that suspicion of his son began to mingle itself with his former esteem; and that, by degrees, he came to view him with jealousy and fear; she introduced, as by accident, some discourse concerning the rebellion of his father Selim against Bajazet his grandfather: she took notice of the bravery

1553. of the veteran troops under Mustapha's command, and of the neighbourhood of Diarbequir to the territories of the Persian sophi, Solyman's mortal enemy. By these arts, whatever remained of paternal tenderness was gradually extinguished, and such passions were kindled in the breast of the sultan, as gave all Roxalana's malignant suggestions the colour not only of probability but of truth. His suspicions and fear of Mustapha settled into deep-rooted hatred. He appointed spies to observe and report all his words and actions; he watched and stood on his guard against him as his most dangerous enemy.

Having thus alienated the sultan's heart from Mustapha, Roxalana ventured upon another step. She entreated Solyman to allow her own sons the liberty of appearing at court, hoping that, by gaining access to their father, they might, by their good qualities and dutiful deportment, insinuate themselves into that place in his affections which Mustapha had formerly held; and, though what she demanded was contrary to the practice of the Ottoman family in that age, the uxorious monarch granted her request. To all these female intrigues Rustan added an artifice still more subtle, which completed the sultan's delusion, and heightened his jealousy and fear. He wrote to the bashàs of the provinces adjacent to Diarbequir, instructing them to send him regular intelligence of Mustapha's proceedings in his government; and to each of them he gave a private hint, flowing in appearance from his zeal for their interest, that nothing would be more acceptable to the sultan than to receive favourable accounts of a son whom he destined to sustain the glory of the Ottoman name. The bashàs, ignorant of his fraudulent intention, and eager to pay court to their sovereign at such an easy price, filled their letters with studied but fatal panegyrics of Mustapha, representing him as a prince worthy to succeed such an illustrious father, and as endowed with talents which might enable him

to emulate, perhaps to equal his fame. These letters were industriously shown to Solyman, at the seasons when it was known that they would make the deepest impression. Every expression in recommendation of his son wounded him to the heart; he suspected his principal officers of being ready to favour the most desperate attempts of a prince whom they were so fond of praising; and fancying that he saw them already assaulting his throne with rebellious arms, he determined, while it was yet in his power, to anticipate the blow, and to secure his own safety by his son's death. 1553.

For this purpose, though under pretence of renewing the war against Persia, he ordered Rustan to march towards Diarbequir, at the head of a numerous army, and to rid him of a son whose life he deemed inconsistent with his own safety. But that crafty minister did not choose to be loaded with the odium of having executed this cruel order. As soon as he arrived in Syria, he wrote to Solyman, that the danger was so imminent as called for his immediate presence; that the camp was full of Mustapha's emissaries; that many of the soldiers were corrupted; that the affections of all leaned towards him; that he had discovered a negotiation which had been carried on with the sophi of Persia in order to marry Mustapha with one of his daughters; that he already felt his own talents as well as authority to be inadequate to the exigencies of such an arduous conjuncture; that the sultan alone had sagacity to discern what resolution should be taken in those circumstances, and power to carry that resolution into execution.

This charge of courting the friendship of the sophi, Roxalana and Rustan had reserved as the last and most envenomed of all their calumnies. It operated with the violence which they expected from Solyman's inveterate abhorrence of the Persians, and threw him into the wildest transports of rage. He set out in-

1553. stantly for Syria, and hastened thither with all the precipitation and impatience of fear and revenge. As soon as he joined his army near Aleppo, and had concerted measures with Rustan, he sent a chiaus, or messenger of the court, to his son, requiring him to repair immediately to his presence. Mustapha, though no stranger to his step-mother's machinations, or to Rustan's malice, or to his father's violent temper, yet, relying on his own innocence, and hoping to discredit the accusations of his enemies by the promptitude of his obedience, followed the messenger without delay to Aleppo. The moment he arrived in the camp, he was introduced into the sultan's tent. As he entered it, he observed nothing that could give him any alarm; no additional crowd of attendants, no body of armed guards, but the same order and silence which always reign in the sultan's apartments. In a few minutes, however, several mutes appeared, at the sight of whom Mustapha, knowing what was his doom, cried with a loud voice, "Lo, my death!" and attempted to fly. The mutes rushed forward to seize him; he resisted and struggled, demanding with the utmost earnestness to see the sultan; and despair, together with the hope of finding protection from the soldiers, if he could escape out of the tent, animated him with such extraordinary strength, that, for some time, he baffled all the efforts of the executioners. Solyman was within hearing of his son's cries, as well as of the noise which the struggle occasioned. Impatient of this delay of his revenge, and struck with terrour at the thoughts of Mustapha's escaping, he drew aside the curtain which divided the tent, and, thrusting in his head, darted a fierce look towards the mutes, and, with wild and threatening gestures, seemed to condemn their sloth and timidity. At sight of his father's furious and unrelenting countenance, Mustapha's strength failed, and his courage forsook him; the mutes fastened the bow-

string about his neck, and in a moment put an end to his life. 1553.

The dead body was exposed before the sultan's tent. The soldiers gathered round it, and, contemplating that mournful object with astonishment, and sorrow, and indignation, were ready, if a leader had not been wanting, to have broke out into the wildest excesses of rage. After giving vent to the first expressions of their grief, they retired each man to his tent, and, shutting themselves up, bewailed in secret the cruel fate of their favourite; nor was there one of them who tasted food, or even water, during the remainder of that day. Next morning the same solitude and silence reigned in the camp; and Solyman, being afraid that some dreadful storm would follow this sullen calm, in order to appease the enraged soldiers, deprived Rustan of the seals, ordered him to leave the camp, and raised Achmet, a gallant officer, much beloved in the army, to the dignity of vizier. This change, however, was made in concert with Rustan himself; that crafty minister suggesting it as the only expedient which could save himself or his master. But within a few months, when the resentment of the soldiers began to subside, and the name of Mustapha to be forgotten, Achmet was strangled by the sultan's command, and Rustan reinstated in the office of vizier. Together with his former power, he reassumed the plan for exterminating the race of Mustapha, which he had concerted with Roxalana; and as they were afraid that an only son whom Mustapha had left, might grow up to avenge his death, they redoubled their activity, and by employing the same arts against him which they had practised against his father, they inspired Solyman with the same fears, and prevailed on him to issue orders for putting to death that young innocent prince. These orders were executed with barbarous zeal, by an eunuch, who was despatched to Bursa, the place where

1553. the prince resided; and no rival was left to dispute the Ottoman throne with the sons of Roxalana[t].

Charles projects a marriage between his son and Mary of England;

Such tragical scenes, productive of so deep distress, seldom occur but in the history of the great monarchies of the east, where the warmth of the climate seems to give every emotion of the heart its greatest force, and the absolute power of sovereigns accustoms and enables them to gratify all their passions without control. While this interesting transaction in the court of Soliman engaged his whole attention, Charles was pursuing, with the utmost ardour, a new scheme for aggrandizing his family. About this time, Edward the sixth of England, after a short reign, in which he displayed such virtues as filled his subjects with sanguine hopes of being happy under his government, and made them bear with patience all that they suffered from the weakness, the dissensions, and the ambition of the ministers who assumed the administration during his minority, was seized with a lingering distemper which threatened his life. The emperor no sooner received an account of this, than his ambition, always attentive to seize every opportunity of acquiring an increase of power, or of territories, to his son, suggested the thought of adding England to his other kingdoms, by the marriage of Philip with the princess Mary, the heir of Edward's crown. Being apprehensive, however, that his son, who was then in Spain, might decline a match with a princess in her thirty-eighth year, and eleven years older than himself[u]; Charles determined, notwithstanding his own age and infirmities, to make offer of himself as a husband to his cousin.

to which Philip gives his consent.

But though Mary was so far advanced in years, and destitute of every charm either of person or manners

[t] Augerii Gislenii Busbequii Legationis Turcicæ Epistolæ iv. Franc. 1615, p. 37. Thuan. lib. xii. 432. Mém. de Ribier, ii. p. 457. Mauroceni, Histor. Veneta, lib. vii. p. 60.

[u] Palav. Hist. Concil. Trid. vol. ii. c. 13. p. 150.

that could win affection, or command esteem, Philip, without hesitation, gave his consent to the match proposed by his father, and was willing, according to the usual maxim of princes, to sacrifice his inclination to his ambition. In order to ensure the success of his scheme, the emperor, even before Edward's death, began to take such steps as might facilitate it. Upon Edward's demise, Mary mounted the throne of England; the pretensions of the lady Jane Gray proving as unfortunate, as they were ill-founded[x]. Charles sent immediately a pompous embassy to London to congratulate Mary on her accession to the throne, and to propose the alliance with his son. The queen, dazzled with the prospect of marrying the heir of the greatest monarch in Europe; fond of uniting more closely with her mother's family, to which she had been always warmly attached; and eager to secure the powerful aid which, she knew, would be necessary towards carrying on her favourite scheme of reestablishing the Romish religion in England, listened in the most favourable manner to the proposal. Among her subjects, it met with a very different reception. Philip, it was well known, contended for all the tenets of the church of Rome with a sanguinary zeal which exceeded the measure even of Spanish bigotry: this alarmed all the numerous partisans of the reformation. The Castilian haughtiness and reserve were far from being acceptable to the English, who, having several times seen their throne occupied by persons who were born subjects, had become accustomed to an unceremonious and familiar intercourse with their sovereigns. They could not think, without the utmost uneasiness, of admitting a foreign prince to that influence in their councils, which the husband of their queen would naturally possess. They dreaded, both from Philip's overbearing temper, and from the maxims of the

1553.

The sentiments of Mary and of the English with regard to it.

[x] Carte's Hist. of England, iii. p. 287.

1553. Spanish monarchy which he had imbibed, that he would infuse ideas into the queen's mind dangerous to the liberties of the nation, and would introduce foreign troops and money into the kingdom to assist her in any attempt against them.

The house of commons remonstrate against it.

Full of these apprehensions, the house of commons, though in that age extremely obsequious to the will of their monarchs, presented a warm address against the Spanish match; many pamphlets were published, representing the dangerous consequences of the alliance with Spain, and describing Philip's bigotry and arrogance in the most odious colours. But Mary, inflexible in all her resolutions, paid no regard to the remonstrances of her commons, or to the sentiments of the people. The emperor having secured, by various arts, the ministers whom she trusted most, they approved warmly of the match, and large sums were remitted by him in order to gain the rest of the council. Cardinal Pole, whom the pope, immediately upon Mary's accession, had despatched as his legate into England, in order to reconcile his native country to the see of Rome, was detained by the emperor's command at Dillinghen in Germany, lest by his presence he should thwart Philip's pretensions, and employ his interest in favour of his kinsman, Courtnay earl of Devonshire, whom the English ardently wished their sovereign to choose for a husband[y].

The marriage treaty concluded.

As the negotiation did not admit of delay, it was carried forward with the greatest rapidity, the emperor agreeing, without hesitation, to every article in favour of England, which Mary's ministers either represented as necessary to sooth the people and reconcile them to the match, or that was suggested by their own fears and jealousy of a foreign master. The chief articles were: That Philip, during his marriage with the queen, should bear the title of king of England, but the entire

1554, Jan. 12.

[y] Carte, iii. p. 288.

administration of affairs, as well as the sole disposal of all revenues, offices, and benefices, should remain with the queen; that the heirs of the marriage should, together with the crown of England, inherit the dutchy of Burgundy and the Low Countries; that if prince Charles, Philip's only son by a former marriage, should die without issue, his children by the queen, whether male or female, should succeed to the crown of Spain, and all the emperor's hereditary dominions; that, before the consummation of the marriage, Philip should swear solemnly, that he would retain no domestic who was not a subject of the queen, and would bring no foreigners into the kingdom that might give umbrage to the English; that he would make no alteration in the constitution or laws of England; that he would not carry the queen, or any of the children born of this marriage, out of the kingdom; that if the queen should die before him without issue, he would immediately leave the crown to the lawful heir, without claiming any right of administration whatever; that, in consequence of this marriage, England should not be engaged in any war subsisting between France and Spain; and that the alliance between France and England should remain in full force[z]. 1554.

But this treaty, though both the emperor and Mary's ministers employed their utmost address in framing it so as to please the English, was far from quieting their fears and jealousies. They saw that words and promises were a feeble security against the encroachments of an ambitious prince, who, as soon as he got possession of the power and advantages which the queen's husband must necessarily enjoy, could easily evade any of the articles which either limited his authority, or obstructed his schemes. They were convinced that, the more favourable the conditions of the present treaty were to England, the more Philip would be tempted, Discontent and apprehensions of the English.

[z] Rymer's Fœd. vol. xv. 377. 393. Mém. de Ribier, ii. p. 498.

1554. hereafter, to violate them. They dreaded that England, like Naples, Milan, and the other countries annexed to Spain, would soon feel the dominion of that crown to be intolerably oppressive, and be constrained, as they had been, to waste its wealth and vigour in wars wherein it had no interest, and from which it could derive no advantage. These sentiments prevailed so generally, that every part of the kingdom was filled with discontent at the match, and with indignation against the advisers of it. Sir Thomas Wyat, a gentleman of some note, and of good intentions towards the public, took advantage of this, and roused the inhabitants of Kent to arms, in order to save their country from a foreign yoke. Great numbers resorted, in a short time, to his standard; he marched to London with such rapidity, and the queen was so utterly unprovided for defence, that the aspect of affairs was extremely threatening; and if any nobleman of distinction had joined the malecontents, or had Wyat possessed talents equal, in any degree, to the boldness of his enterprise, the insurrection must have proved fatal to Mary's power. But all Wyat's measures were concerted with so little prudence, and executed with such irresolution, that many of his followers forsook him; the rest were dispersed by an handful of soldiers; and he himself was taken prisoner, without having made any effort worthy of the cause that he had undertaken, or suitable to the ardour with which he engaged in it. He suffered the punishment due to his rashness and rebellion. The queen's authority was confirmed and increased by her success in defeating this inconsiderate attempt to abridge it. The lady Jane Gray, whose title the ambition of he relations had set up in opposition to that of the queen, was, notwithstanding her youth and innocence, brought to the scaffold. The lady Elizabeth, the queen's sister, was observed with the most jealous attention. The treaty of marriage was ratified by the parliament.

Wyat's insurrection.

1554.

Philip landed in England with a magnificent retinue, celebrated his nuptials with great solemnity; and though he could not lay aside his natural severity and pride, or assume gracious and popular manners, he endeavoured to conciliate the favour of the English nobility by his extraordinary liberality. Lest that should fail of acquiring him such influence in the government of the kingdom as he aimed at obtaining, the emperor kept a body of twelve thousand men on the coast of Flanders, in readiness to embark for England, and to support his son in all his enterprises.

The marriage celebrated.

Emboldened by all these favourable circumstances, Mary pursued the scheme of extirpating the protestant religion out of her dominions, with the most precipitant zeal. The laws of Edward the sixth, in favour of the reformation, were repealed; the protestant clergy ejected; all the forms and rites of the popish worship were reestablished; the nation was solemnly absolved from the guilt which it had contracted during the period of its apostacy, and was publicly reconciled to the church of Rome, by cardinal Pole, who, immediately after the queen's marriage, was permitted to continue his journey to England, and to exercise his legatine functions with the most ample power. Not satisfied with having overturned the protestant church, and reestablishing the ancient system on its ruins, Mary insisted that all her subjects should conform to the same mode of worship which she preferred, should profess their faith in the same creed which she had approved, and abjure every practice or opinion that was deemed repugnant to either of them. Powers altogether unknown in the English constitution were vested in certain persons appointed to take cognizance of heresy, and they proceeded to exercise them with more than inquisitorial severity. The prospect of danger, however, did not intimidate the principal teachers of the protestant doctrines, who believed that they were contending for truths of the utmost consequence

Mary's measures to overturn the protestant religion in England.

1554. to the happiness of mankind. They boldly avowed their sentiments, and were condemned to that cruel death which the church of Rome reserves for its enemies. This shocking punishment was inflicted with that barbarity which the rancour of false zeal alone can inspire. The English, who are inferior in humanity to no people in Europe, and remarkable for the mildness of their public executions, beheld, with astonishment and horrour, persons who had filled the most respectable stations in their church, and who were venerable on account of their age, their piety, and their literature, condemned to endure torments to which their laws did not subject even the most atrocious criminals.

The obstacles which she had to surmount.

This extreme rigour did not accomplish the end at which Mary aimed. The patience and fortitude with which these martyrs for the reformation submitted to their sufferings, the heroic contempt of death expressed by persons of every rank, and age, and sex, confirmed many more in the protestant faith, than the threats of their enraged persecutors could frighten into apostacy. The business of such as were intrusted with trying heretics multiplied continually, and appeared to be as endless as it was odious. The queen's ablest ministers became sensible how impolitic, as well as dangerous, it was to irritate the people by the frequent spectacle of public executions, which they detested as no less unjust than cruel. Even Philip was so thoroughly convinced of her having run to an excess of rigour, that, on this occasion, he assumed a part to which he was little accustomed, becoming an advocate for moderation and lenity[a].

The English jealous of Philip.

But, notwithstanding this attempt to ingratiate himself with the English, they discovered a constant jealousy and distrust of all his intentions; and when some

[a] Godwin's Annals of Q. Mary, ap. Kennet, ii. p. 329. Burnet's Hist. of Reform. ii. p. 298. 305.

members, who had been gained by the court, ventured to move in the house of commons that the nation ought to assist the emperor, the queen's father-in-law, in his war against France, the proposal was rejected with general dissatisfaction. A motion which was made, that the parliament should give its consent that Philip might be publicly crowned as the queen's husband, met with such a cold reception that it was instantly withdrawn [b]. 1554.

The king of France had observed the progress of the emperor's negotiation in England with much uneasiness. The great accession of territories, as well as reputation, which his enemy would acquire by the marriage of his son with the queen of such a powerful kingdom was obvious and formidable. He easily foresaw that the English, notwithstanding all their fears and precautions, would be soon drawn in to take part in the quarrels on the continent, and be compelled to act in subserviency to the emperor's ambitious schemes. For this reason, Henry had given it in charge to his ambassador at the court of London, to employ all his address in order to defeat or retard the treaty of marriage; and, as there was not, at that time, any prince of the blood in France, whom he could propose to the queen as an husband, he instructed him to cooperate with such of the English as wished their sovereign to marry one of her own subjects. But the queen's ardour and precipitation in closing with the first overtures in favour of Philip having rendered all his endeavours ineffectual, Henry was so far from thinking it prudent to give any aid to the English malecontents, though earnestly solicited by Wyat and their other leaders, who tempted him to take them under his protection, by offers of great advantage to France, that he commanded his ambassador to congratulate the queen in the warmest terms upon the suppression of the insurrection. The French king alarmed at the match between Philip and Mary.

[b] Carte's Hist. of England, iii. p. 314.

1554.

His preparations for a vigorous campaign.

Notwithstanding these external professions, Henry dreaded so much the consequence of this alliance, which more than compensated for all the emperor had lost in Germany, that he determined to carry on his military operations, both in the Low Countries and in Italy, with extraordinary vigour, in order that he might compel Charles to accept of an equitable peace, before his daughter-in-law could surmount the aversion of her subjects to a war on the continent, and prevail on them to assist the emperor either with money or troops. For this purpose, he exerted himself to the utmost in order to have a numerous army early assembled on the frontiers of the Netherlands; and while one part of it laid waste the open country of Artois, the main body, under the constable Montmorency, advanced towards the provinces of Liege and Hainault by the forest of Ardennes.

The progress of his arms. June 28.

The campaign was opened with the siege of Mariemburg, a town which the queen of Hungary, the governess of the Low Countries, had fortified at great expense; but, being destitute of a sufficient garrison, it surrendered in six days. Henry, elated with this success, put himself at the head of his army, and, investing Bouvines, took it by assault, after a short resistance. With equal facility he became master of Dinant; and then, turning to the left, bent his march towards the province of Artois. The large sums which the emperor had remitted into England had so exhausted his treasury, as to render his preparations, at this juncture, slower and more dilatory than usual. He had no body of troops to make head against the French at their first entrance into his territories; and though he drew together all the forces in the country in the utmost hurry, and gave the command of them to Emanuel Philibert of Savoy, they were in no condition to face an enemy so far superior in number. The prince of Savoy, however, by his activity and good conduct, made up for his want of troops. By watch-

The emperor little able to obstruct it.

ing all the motions of the French at a distance, and by choosing his own posts with skill, he put it out of their power either to form any siege of consequence, or to attack him. Want of subsistence soon obliged them to fall back towards their own frontiers, after having burnt all the open towns, and having plundered the country through which they marched, with a cruelty and license more becoming a body of light troops than a royal army led by a great monarch. 1554.

But Henry, that he might not dismiss his army without attempting some conquest adequate to the great preparations, as well as sanguine hopes, with which he had opened the campaign, invested Renti, a place deemed in that age of great importance, as, by its situation on the confines of Artois and the Boulonnois, it covered the former province, and protected the parties which made incursions into the latter. The town, which was strongly fortified, and provided with a numerous garrison, made a gallant defence; but, being warmly pressed by a powerful army, it must soon have yielded. The emperor, who, at that time, enjoyed a short interval of ease from the gout, was so solicitous to save it, that, although he could bear no other motion but that of a litter, he instantly put himself at the head of his army, which, having received several reinforcements, was now strong enough to approach the enemy. The French were eager to decide the fate of Renti by a battle, and expected it from the emperor's arrival in his camp; but Charles avoided a general action with great industry; and, as he had nothing in view but to save the town, he hoped to accomplish that, without exposing himself to the consequences of such a dangerous and doubtful event. The French invest Renti.

Notwithstanding all his precautions, a dispute about a post which both armies endeavoured to seize, brought on an engagement which proved almost general. The duke of Guise, who commanded the wing of the French which stood the brunt of the combat, dis- An action between the two armies, Aug. 13.

1554. played valour and conduct worthy of the defender of Metz; the imperialists, after an obstinate struggle, were repulsed; the French remained masters of the post in dispute; and if the constable, either from his natural caution and slowness, or from unwillingness to support a rival whom he hated, had not delayed bringing up the main body to second the impression which Guise had made, the rout of the enemy must have been complete. The emperor, notwithstanding the loss which he had sustained, continued in the same camp; and the French, being straitened for provisions, and finding it impossible to carry on the siege in the face of an hostile army, quitted their intrenchments. They retired openly, courting the enemy to approach, rather than shunning an engagement.

The imperialists invade Picardy.

But Charles, having gained his end, suffered them to march off unmolested. As soon as his troops entered their own country, Henry threw garrisons into the frontier towns, and dismissed the rest of the army. This encouraged the imperialists to push forward with a considerable body of troops into Picardy; and, by laying waste the country with fire and sword, they endeavoured to revenge themselves for the ravages which the French had committed in Hainault and Artois [c]. But, as they were not able to reduce any place of importance, they gained nothing more than the enemy had done by this cruel and inglorious method of carrying on the war.

Affairs of Italy.

The arms of France were still more unsuccessful in Italy. The footing which the French had acquired in Siena, occasioned much uneasiness to Cosmo de' Medici, the most sagacious and enterprising of all the Italian princes. He dreaded the neighbourhood of a powerful people, to whom all who favoured the ancient republican government in Florence would have recourse, as to their natural protectors, against that ab-

[c] Thuan. p. 460, etc. Haræi Ann. Brab. p. 674.

solute authority which the emperor had enabled him to usurp; he knew how odious he was to the French, on account of his attachment to the imperial party; and he foresaw that, if they were permitted to gather strength in Siena, Tuscany would soon feel the effects of their resentment. For these reasons, he wished with the utmost solicitude for the expulsion of the French out of the Sienese, before they had time to establish themselves thoroughly in the country, or to receive such reinforcements from France as would render it dangerous to attack them. As this, however, was properly the emperor's business, who was called by his interest as well as honour to dislodge those formidable intruders into the heart of his dominions, Cosmo laboured to throw the whole burthen of the enterprise on him; and, on that account, had given no assistance, during the former campaign, but by advancing some small sums of money towards the payment of the imperial troops.

1554.

Cosmo de' Medici's schemes with regard to Siena.

But as the defence of the Netherlands engrossed all the emperor's attention, and his remittances into England had drained his treasury, it was obvious that his operations in Italy would be extremely feeble; and Cosmo plainly perceived, that if he himself did not take part openly in the war, and act with vigour, the French would scarcely meet with any annoyance. As his situation rendered this resolution necessary and unavoidable, his next care was to execute it in such a manner, that he might derive from it some other advantage, besides that of driving the French out of his neighbourhood. With this view, he despatched an envoy to Charles, offering to declare war against France, and to reduce Siena at his own charges, on condition that he should be repaid whatever he might expend in the enterprise, and be permitted to retain all his conquests until his demands were fully satisfied. Charles, to whom, at this juncture, the war against Siena was an intolerable burthen, and who had neither

He negotiates with the emperor;

1554. expedient nor resource that could enable him to carry it on with proper vigour, closed gladly with this overture; and Cosmo, well acquainted with the low state of the imperial finances, flattered himself that the emperor, finding it impossible to reimburse him, would suffer him to keep quiet possession of whatever places he should conquer [d].

enters into war with France;

Full of these hopes, he made great preparations for war; and as the French king had turned the strength of his arms against the Netherlands, he did not despair of assembling such a body of men, as would prove more than a sufficient match for any force which Henry could bring into the field in Italy. He endeavoured, by giving one of his daughters to the pope's nephew, to obtain assistance from the holy see, or at least to secure his remaining neutral. He attempted to detach the duke of Orsini, whose family had been long attached to the French party, from his ancient confederates, by bestowing on him another of his daughters; and, what was of greater consequence than either of these, he engaged John James Medecino, marquis of Marignano, to take the command of his army [e]. This officer, from a very low condition in life, had raised himself, through all the ranks of service, to high command, and had displayed talents, and acquired reputation in war, which entitled him to be placed on a level with the greatest generals in that martial age. Having attained a station of eminence so disproportionate to his birth, he laboured with a fond solicitude to conceal his original obscurity, by giving out that he was descended of the family of Medici, to which honour the casual resemblance of his name was his only pretension. Cosmo, happy that he could gratify him at such an easy rate, flattered his vanity in this point, acknowledged him as a relation, and permitted him to assume the arms of his family. Mede-

gives the command of his army to Medecino.

[d] Adriani, Istoria de' suoi Tempi, vol. i. 662.

[e] Ibid. p. 663.

cino, eager to serve the head of that family, of which he now considered himself as a branch, applied with wonderful zeal and assiduity to raise troops; and as, during his long service, he had acquired great credit with the leaders of those mercenary bands which formed the strength of Italian armies, he engaged the most eminent of them to follow Cosmo's standard. 1554.

Peter Strozzi intrusted with the command of the French army in Italy.

To oppose this able general, and the formidable army which he had assembled, the king of France made choice of Peter Strozzi, a Florentine nobleman, who had resided long in France as an exile, and who had risen by his merit to high reputation as well as command in the army. He was the son of Philip Strozzi, who, in the year one thousand five hundred and thirty-seven, had concurred with such ardour in the attempt to expel the family of Medici out of Florence, in order to reestablish the ancient republican form of government; and who had perished in the undertaking. The son inherited the implacable aversion to the Medici, as well as the same enthusiastic zeal for the liberty of Florence, which had animated his father, whose death he was impatient to revenge. Henry flattered himself that his army would make rapid progress under a general whose zeal to promote his interest was roused and seconded by such powerful passions; especially as he had allotted him, for the scene of action, his native country, in which he had many powerful partisans ready to facilitate all his operations.

The imprudence of this choice.

But how specious soever the motives might appear which induced Henry to make this choice, it proved fatal to the interests of France in Italy. Cosmo, as soon as he heard that the mortal enemy of his family was appointed to take the command in Tuscany, concluded that the king of France aimed at something more than the protection of the Sienese, and saw the necessity of making extraordinary efforts, not merely

1554. to reduce Siena, but to save himself from destruction[f]. At the same time, the cardinal of Ferrara, who had the entire direction of the French affairs in Italy, considered Strozzi as a formidable rival in power, and, in order to prevent his acquiring any increase of authority from success, he was extremely remiss in supplying him either with money to pay his troops, or with provisions to support them. Strozzi himself, blinded by his resentment against the Medici, pushed on his operations with the impetuosity of revenge, rather than with the caution and prudence becoming a great general.

The battle of Marciano; At first, however, he attacked several towns in the territory of Florence with such vigour as obliged Medecino, in order to check his progress, to withdraw the greater part of his army from Siena, which he had invested before Strozzi's arrival in Italy. As Cosmo sustained the whole burthen of military operations, the expense of which must soon have exhausted his revenues; as neither the viceroy of Naples nor governor of Milan was in condition to afford him any effectual aid; and as the troops which Medecino had left in the camp before Siena could attempt nothing against it during his absence; it was Strozzi's business to have protracted the war, and to have transferred the seat of it into the territories of Florence; but the hope of

August 3. ruining his enemy by one decisive blow, precipitated him into a general engagement not far from Marciano.

in which the French are defeated. The armies were nearly equal in number; but a body of Italian cavalry, in which Strozzi placed great confidence, having fled without making any resistance, either through the treachery or cowardice of the officers who commanded it, his infantry remained exposed to the attacks of all Medecino's troops. Encouraged, however, by Strozzi's presence and example, who, after receiving a dangerous wound, in endea-

[f] Pecci, Memorie di Sienna, vol. iv. 103, etc.

vouring to rally the cavalry, placed himself at the head of the infantry, and manifested an admirable presence of mind, as well as extraordinary valour, they stood their ground with great firmness, and repulsed such of the enemy as ventured to approach them. But those gallant troops, being surrounded at last on every side, and torn in pieces by a battery of cannon, which Medecino brought to bear upon them, the Florentine cavalry broke in on their flanks, and a general rout ensued. Strozzi, faint with the loss of blood, and deeply affected with the fatal consequences of his own rashness, found the utmost difficulty in making his escape with an handful of men[g]. 1554.

Medecino returned immediately to the siege of Siena with his victorious forces; and as Strozzi could not, after the greatest efforts of activity, collect as many men as to form the appearance of a regular army, he had leisure to carry on his approaches against the town without molestation. But the Sienese, instead of sinking into despair upon this cruel disappointment of their only hope of obtaining relief, prepared to defend themselves to the utmost extremity, with that undaunted fortitude which the love of liberty alone can inspire. This generous resolution was warmly seconded by Monluc, who commanded the French garrison in the town. The active and enterprising courage which he had displayed on many occasions, had procured him this command; and as he had ambition which aspired at the highest military dignities, without any pretensions to attain them but what he could derive from merit, he determined to distinguish his defence of Siena by extraordinary efforts of valour and perseverance. For this purpose, he repaired and strengthened the fortifications with unwearied industry; he trained the citizens to the use of arms, and accustomed them to go through the fatigues and dangers

Medecino besieges Siena, which is gallantly defended by the citizens and Monluc.

[g] Pecci, di Memorie Sienna, vol. iv. 157.

1554. of service, in common with the soldiers; and, as the enemy were extremely strict in guarding all the avenues to the city, he husbanded the provisions in the magazines with the most parsimonious economy, and prevailed on the soldiers, as well as the citizens, to restrict themselves to a very moderate daily allowance for their subsistence. Medecino, though his army was not numerous enough to storm the town by open force, ventured twice to assault it by surprise; but he was received each time with so much spirit, and repulsed with such loss, as discouraged him from repeating the attempt, and left him no hopes of reducing the town but by famine.

Medecino converts the siege into a blockade.

With this view, he fortified his own camp with great care, occupied all the posts of strength round the place, and having entirely cut off the besieged from any communication with the adjacent country, he waited patiently until necessity should compel them to open their gates. But their enthusiastic zeal for liberty made the citizens despise the distresses occasioned by the scarcity of provisions, and supported them long under all the miseries of famine: Monluc, by his example and exhortations, taught his soldiers to vie with them in patience and abstinence; and it was not until they had withstood a siege of ten months, until they had eaten up all the horses, dogs, and other animals in the place, and were reduced almost to their last morsel of bread, that they proposed a capitulation. Even then they

1555. demanded honourable terms; and as Cosmo, though no stranger to the extremity of their condition, was afraid that despair might prompt them to venture upon some wild enterprise, he immediately granted them conditions more favourable than they could have expected.

April 22. The town obliged by famine to capitulate.

The capitulation was made in the emperor's name, who engaged to take the republic of Siena under the protection of the empire; he promised to maintain the ancient liberties of the city, to allow the magistrates

the full exercise of their former authority, to secure the citizens in the undisturbed possession of their privileges and property; he granted an ample and unlimited pardon to all who had borne arms against him; he reserved to himself the right of placing a garrison in the town, but engaged not to rebuild the citadel without the consent of the citizens. Monluc and his French garrison were allowed to march out with all the honours of war. 1555.

Medecino observed the articles of capitulation, as far as depended on him, with great exactness. No violence or insult whatever was offered to the inhabitants, and the French garrison was treated with all the respect due to their spirit and bravery. But many of the citizens suspecting from the extraordinary facility with which they had obtained such favourable conditions, that the emperor, as well as Cosmo, would take the first opportunity of violating them, and disdaining to possess a precarious liberty, which depended on the will of another, abandoned the place of their nativity, and accompanied the French to Monte-Alcino, Porto Ercole, and other small towns in the territory of the republic. They established in Monte-Alcino the same model of government to which they had been accustomed at Siena, and, appointing magistrates with the same titles and jurisdiction, solaced themselves with this image of their ancient liberty.

Many of the Sienese retire to Monte-Alcino;

and establish a free government there.

The fears of the Sienese concerning the fate of their country were not imaginary, or their suspicion of the emperor and Cosmo ill-founded; for no sooner had the imperial troops taken possession of the town, than Cosmo, without regarding the articles of capitulation, not only displaced the magistrates who were in office, and nominated new ones devoted to his own interest, but commanded all the citizens to deliver up their arms to persons whom he appointed to receive them. They submitted to the former from necessity, though with all the reluctance and regret which men, accustomed to

Hardships to which the citizens of Siena were subjected.

1555. liberty, feel in obeying the first commands of a master. They did not yield the same tame obedience to the latter; and many persons of distinction, rather than degrade themselves from the rank of freemen to the condition of slaves, by surrendering their arms, fled to their countrymen at Monte-Alcino, and chose to endure all the hardships, and encounter all the dangers, which they had reason to expect in that new station, where they had fixed the seat of their republic.

Cosmo attacks those who had retired.

Cosmo, not reckoning himself secure while such numbers of implacable and desperate enemies were settled in his neighbourhood, and retained any degree of power, solicited Medecino to attack them in their different places of retreat, before they had time to recruit their strength and spirits, after the many calamities which they had suffered. He prevailed on him, though his army was much weakened by hard duty during the siege of Siena, to invest Porto Ercole; and the fortifications being both slight and incomplete, the besieged were soon compelled to open their gates. An unexpected order, which Medecino received from the emperor to detach the greater part of his troops into Piedmont, prevented farther operations, and permitted the Sienese exiles to reside for some time undisturbed in Monte-Alcino. But their unhappy countrymen who remained at Siena, were not yet at the end of their sufferings; for the emperor, instead of adhering to the articles of capitulation, granted his son Philip the investiture of that city and all its dependencies; and Francis de Toledo, in the name of their new master, proceeded to settle the civil and military government, treated them like a conquered people, and subjected them to the Spanish yoke, without paying any regard whatever to their privileges or ancient form of government[h].

June 13.

[h] Sleid. p. 617. Thuan. lib. xv. 526. 537. Joan. Camerarii Adnot. Rer. præcipuarum ab Anno 1550, ad 1561, ap. Freherum, vol. iii. 564. Pecci, Memorie di Sienna, iv. p. 64, etc.

1555.

Operations in Piedmont.

The imperial army in Piedmont had been so feeble for some time, and its commander so inactive, that the emperor, in order to give vigour to his operations in that quarter, found it necessary not only to recall Medecino's troops from Tuscany while in the career of conquest, but to employ in Piedmont a general of such reputation and abilities, as might counterbalance the great military talents of the maréchal Brissac, who was at the head of the French forces in that country.

Charles appoints the duke of Alva generalissimo there.

He pitched on the duke of Alva for that purpose; but that choice was as much the effect of a court intrigue, as of his opinion with respect to the duke's merit. Alva had long made court to Philip with the utmost assiduity, and had endeavoured to work himself into his confidence by all the insinuating arts of which his haughty and inflexible nature was capable. As he nearly resembled that prince in many features of his character, he began to gain much of his good-will. Ruy Gomez de Silva, Philip's favourite, who dreaded the progress which this formidable rival made in his master's affections, had the address to prevail with the emperor to name Alva to this command. The duke, though sensible that he owed this distinction to the malicious arts of an enemy, who had no other aim than to remove him at a distance from court, was of such punctilious honour, that he would not decline a command that appeared dangerous and difficult, but, at the same time, was so haughty that he would not accept of it but on his own terms, insisting on being appointed the emperor's vicar general in Italy, with the supreme military command in all the imperial and Spanish territories in that country. Charles granted all his demands; and he took possession of his new dignity with almost unlimited authority.

His operations there inconsiderable.

His first operations, however, were neither proportioned to his former reputation and the extensive powers with which he was invested, nor did they come up to the emperor's expectations. Brissac had under his

1555. command an army which, though inferior in number to the imperialists, was composed of chosen troops, which having grown old in service in that country, where every town was fortified, and every castle capable of being defended, were perfectly acquainted with the manner of carrying on war there. By their valour, and his own good conduct, Brissac not only defeated all the attempts of the imperialists, but added new conquests to the territories of which he was formerly master. Alva, after having boasted, with his usual arrogance, that he would drive the French out of Piedmont in a few weeks, was obliged to retire into winter quarters, with the mortification of being unable to preserve entire that part of the country of which the emperor had hitherto kept possession[i].

As the operations of this campaign in Piedmont were indecisive, those in the Netherlands were inconsiderable, neither the emperor nor king of France being able to bring into the field an army strong enough to undertake any enterprise of moment. But what Charles wanted in force, he endeavoured to supply by a bold stratagem, the success of which would have been equal to that of the most vigorous campaign. During the siege of Metz, Leonard, father guardian of a convent of franciscans in that city, had insinuated himself far into the esteem and favour of the duke of Guise, by his attachment to the French. Being a man of an active and intriguing spirit, he had been extremely useful both in animating the inhabitants to sustain with patience all the hardships of the siege, and in procuring intelligence of the enemy's designs and motions. The merit of those important services, together with the warm recommendations of the duke of Guise, secured him such high confidence with Vielleville, who was appointed governor of Metz, when Guise left the town, that he was permitted to converse or correspond

A conspiracy to betray Metz to the imperialists.

[i] Thuan. lib. xv. 529. Guichenon, Hist. de Savoie, tom. i. 670.

with whatever persons he thought fit, and nothing that he did created any suspicion. This monk, from the levity natural to bold and projecting adventurers; or from resentment against the French, who had not bestowed on him such rewards as he thought due to his own merit; or tempted, by the unlimited confidence which was placed in him, to imagine that he might carry on and accomplish any scheme with perfect security, formed a design of betraying Metz to the imperialists. 1555.

The plan of it;

He communicated his intentions to the queen dowager of Hungary, who governed the Low Countries in the name of her brother. She approving, without any scruple, any act of treachery, from which the emperor might derive such signal advantage, assisted the father guardian in concerting the most proper plan for ensuring its success. They agreed, that the father guardian should endeavour to gain his monks to concur in promoting the design; that he should introduce into the convent a certain number of chosen soldiers disguised in the habit of friars; that, when every thing was ripe for execution, the governor of Thionville should march towards Metz in the night with a considerable body of troops, and attempt to scale the ramparts; that while the garrison was employed in resisting the assailants, the monks should set fire to the town in different places; that the soldiers who lay concealed should sally out of the convent, and attack those who defended the ramparts in the rear. Amidst the universal terrour and confusion, which events so unexpected would occasion, it was not doubted but that the imperialists might become masters of the town. As a recompense for this service, the father guardian stipulated that he should be appointed bishop of Metz, and ample rewards were promised to such of his monks as should be most active in cooperating with him.

its progress:

The father guardian accomplished what he had un-

1555. dertaken to perform with great secrecy and despatch. By his authority and arguments, as well as by the prospect of wealth and honours which he set before his monks, he prevailed on all of them to enter into the conspiracy. He introduced into the convent, without being suspected, as many soldiers as were thought sufficient. The governor of Thionville, apprized in due time of the design, had assembled a proper number of troops for executing it; and the moment approached, which probably would have wrested from Henry the most important of all his conquests.

is discovered. But, happily for France, on the very day that was fixed for striking the blow, Vielleville, an able and vigilant officer, received information from a spy whom he entertained at Thionville, that certain franciscan friars resorted frequently thither, and were admitted to many private conferences with the governor, who was carrying on preparations for some military enterprise with great despatch, but with a most mysterious secrecy. This was sufficient to awaken Vielleville's suspicions. Without communicating these to any person, he instantly visited the convent of franciscans; detected the soldiers who were concealed there; and forced them to discover as much as they knew concerning the nature of the enterprise. The father guardian, who had gone to Thionville that he might put the last hand to his machinations, was seized at the gate as he returned; and he, in order to save himself from the rack, revealed all the circumstances of the conspiracy.

A body of imperialists defeated. Vielleville, not satisfied with having seized the traitors, and having frustrated their schemes, was solicitous to take advantage of the discoveries which he had made, so as to be revenged on the imperialists. For this purpose he marched out with the best troops in his garrison; and placing these in ambush near the road, by which the father guardian had informed him that the governor of Thionville would approach Metz,

he fell upon the imperialists with great fury, as they advanced in perfect security, without suspecting any danger to be near. Confounded at this sudden attack, by an enemy whom they expected to surprise, they made little resistance; and a great part of the troops employed in this service, among whom were many persons of distinction, was killed or taken prisoners. Before next morning, Vielleville returned to Metz in triumph. 1555.

The conspirators punished.

No resolution was taken, for some time, concerning the fate of the father guardian and his monks, the framers and conductors of this dangerous conspiracy. Regard for the honour of a body so numerous and respectable as the franciscans, and unwillingness to afford a subject of triumph to the enemies of the Romish church by their disgrace, seem to have occasioned this delay. But, at length, the necessity of inflicting exemplary punishment upon them, in order to deter others from venturing to commit the same crime, became so evident, that orders were issued to proceed to their trial. The guilt was made apparent by the clearest evidence; and sentence of death was passed upon the father guardian, together with twenty monks. On the evening previous to the day fixed for their execution, the gaoler took them out of the dungeons in which they had hitherto been confined separately, and shut them all up in one great room, that they might confess their sins one to another, and join together in preparing for a future state. But, as soon as they were left alone, instead of employing themselves in the religious exercises suitable to their condition, they began to reproach the father guardian, and four of the senior monks who had been most active in seducing them, for their inordinate ambition, which had brought such misery on them, and such disgrace upon their order. From reproaches they proceeded to curses and execrations; and at last, in a phrensy of rage and despair, they fell upon them

1555. with such violence, that they murdered the father guardian on the spot, and so disabled the other four, that it became necessary to carry them next morning in a cart, together with the dead body of the father guardian, to the place of execution. Six of the youngest were pardoned, the rest suffered the punishment which their crime merited [k].

A fruitless negotiation in order to establish peace.

Though both parties, exhausted by the length of the war, carried it on in this languishing manner, neither of them showed any disposition to listen to overtures of peace. Cardinal Pole, indeed, laboured with all the zeal becoming his piety and humanity, to reestablish concord among the princes of christendom. He had not only persuaded his mistress, the queen of England, to enter warmly into his sentiments, and to offer her mediation to the contending powers, but had prevailed both on the emperor and king of France to send their plenipotentiaries to a village between Gravelines and Ardres. He himself, together with Gardiner, bishop of Winchester, repaired thither in order to preside as mediators in the conferences, which were to be held for adjusting all the points in difference. But though each of the monarchs committed this negotiation to some of their ministers, in whom they placed the greatest confidence, it was soon evident that they came together with no sincere desire of
May 21. accommodation. Each proposed articles so extravagant that they could have no hopes of their being accepted. Pole, after exerting in vain all his zeal and address in order to persuade them to relinquish such extravagant demands, and to consent to the substitution of more equal conditions, became sensible of the folly of wasting time, in attempting to reestablish concord between those whom their obstinacy rendered

[k] Thuan. lib. xv. 522. Belcar. Com. Rer. Gal. p. 866. Mémoires du Maréch. Vielleville par M. Charloix, tom. iii. 249, etc. p. 347. Par. 1757.

irreconcilable, broke off the conference, and returned to England[1]. 1555.

During these transactions in other parts of Europe, Germany enjoyed such profound tranquillity, as afforded the diet full leisure to deliberate, and to establish proper regulations concerning a point of the greatest consequence to the internal peace of the empire. By the treaty of Passau, in one thousand five hundred and fifty-two, it had been referred to the next diet of the empire to confirm and perfect the plan of religious pacification, which was there agreed upon. The terrour and confusion with which the violent commotions excited by Albert of Brandenburg had filled Germany, as well as the constant attention which Ferdinand was obliged to give to the affairs of Hungary, had hitherto prevented the holding a diet, though it had been summoned, soon after the conclusion of the treaty, to meet at Augsburg. Affairs of Germany.

But as a diet was now necessary, on many accounts, Ferdinand, about the beginning of this year, had repaired to Augsburg. Though few of the princes were present either in person or by their deputies, he opened the assembly by a speech, in which he proposed a termination of the dissensions, to which the new tenets and controversies with regard to religion had given rise, not only as the first and great business of the diet, but as the point which both the emperor and he had most at heart. He represented the innumerable obstacles which the emperor had to surmount before he could procure the convocation of a general council, as well as the fatal accidents which had for some time retarded, and had at last suspended the consultations of that assembly. He observed, that experience had already taught them how vain it was to expect any remedy for evils, which demanded immediate redress, from a general council, the assembling of which would Diet held at Augsburg, and Ferdinand's speech in it.

[1] Thuan. lib. xv. 523. Mém. de Ribier, tom. ii. 613.

1555. either be prevented, or its deliberations be interrupted, by the dissensions and hostilities of the princes of christendom; that a national council in Germany, which, as some imagined, might be called with greater ease, and deliberate with more perfect security, was an assembly of an unprecedented nature, the jurisdiction of which was uncertain in its extent, and the form of its proceedings undefined; that, in his opinion, there remained but one method for composing their unhappy differences, which, though it had been often tried without success, might yet prove effectual if it were attempted with a better and more pacific spirit than had appeared on former occasions, and that was to choose a few men of learning, abilities, and moderation, who, by discussing the disputed articles in an amicable conference, might explain them in such a manner as to bring the contending parties either to unite in sentiment, or to differ with charity.

Suspicions and fears of the protestants.

This speech, being printed in common form, and dispersed over the empire, revived the fears and jealousies of the protestants; Ferdinand, they observed, with much surprise, had not once mentioned, in his address to the diet, the treaty of Passau, the stipulations in which they considered as the great security of their religious liberty. The suspicions to which this gave rise were confirmed by the accounts which they daily received of the extreme severity with which Ferdinand treated their protestant brethren in his hereditary dominions; and as it was natural to consider his actions as the surest indication of his intentions, this diminished their confidence in those pompous professions of moderation and of zeal for the reestablishment of concord, to which his practice seemed to be so repugnant.

These increased by the arrival of a nuncio from the pope to the diet.

The arrival of the cardinal Morone, whom the pope had appointed to attend the diet as his nuncio, completed their conviction, and left them no room to doubt that some dangerous machination was forming

against the peace or safety of the protestant church. 1555.
Julius, elated with the unexpected return of the English nation from apostacy, began to flatter himself that, the spirit of mutiny and revolt having now spent its force, the happy period was come when the church might resume its ancient authority, and be obeyed by the people with the same tame submission as formerly. Full of these hopes, he had sent Morone to Augsburg, with instructions to employ his eloquence to excite the Germans to imitate the laudable example of the English, and his political address in order to prevent any decree of the diet to the detriment of the catholic faith. As Morone inherited from his father, the chancellor of Milan, uncommon talents for negotiation and intrigue, he could hardly have failed of embarrassing the measures of the protestants in the diet, or of defeating whatever they aimed at obtaining in it for their farther security.

The death of Julius the third.

But an unforeseen event delivered them from all the danger which they had reason to apprehend from Morone's presence. Julius, by abandoning himself to pleasures and amusements, no less unbecoming his age than his character, having contracted such habits of dissipation, that any serious occupation, especially if attended with difficulty, became an intolerable burthen to him, had long resisted the solicitations of his nephew to hold a consistory, because he expected there a violent opposition to his schemes in favour of that young man. But when all the pretexts which he could invent for eluding this request were exhausted, and, at the same time, his indolent aversion to business continued to grow upon him, he feigned indisposition rather than yield to his nephew's importunity; and that he might give the deceit a greater colour of probability, he not only confined himself to his apartment, but changed his usual diet and manner of life. By persisting too long in acting this ridiculous part, he contracted a real disease, of which he died in a few days, leaving his March 23.

1555. infamous minion, the cardinal di Monte, to bear his name, and to disgrace the dignity which he had conferred upon him[m]. As soon as Morone heard of his death, he set out abruptly from Augsburg, where he had resided only a few days, that he might be present at the election of a new pontiff.

The nuncio sets out for Rome.

Ferdinand's reasons for wishing to satisfy the protestants.

One cause of their suspicions and fears being thus removed, the protestants soon became sensible that their conjectures concerning Ferdinand's intentions, however specious, were ill-founded, and that he had no thoughts of violating the articles favourable to them in the treaty of Passau. Charles, from the time that Maurice had defeated all his schemes in the empire, and overturned the great system of religious and civil despotism, which he had almost established there, gave little attention to the internal government of Germany, and permitted his brother to pursue whatever measures he judged most salutary and expedient. Ferdinand, less ambitious and enterprising than the emperor, instead of resuming a plan, which he, with power and resources so far superior, had failed of accomplishing, endeavoured to attach the princes of the empire to his family by an administration uniformly moderate and equitable. To this he gave, at present, particular attention, because his situation, at this juncture, rendered it necessary to court their favour and support with more than usual assiduity.

Charles had resumed his plan of altering the succession to the empire.

Charles had again resumed his favourite project of acquiring the imperial crown for his son Philip, the prosecution of which the reception it had met with when first proposed had obliged him to suspend, but had not induced him to relinquish. This led him warmly to renew his request to his brother, that he would accept of some compensation for his prior right of succession, and sacrifice that to the grandeur of the house of Austria. Ferdinand, who was as little dis-

[m] Onuphr. Panvinius de Vitis Pontificum, p. 320. Thuan. *lib.* xv. 517.

posed as formerly to give such an extraordinary proof of self-denial, being sensible that, in order to defeat this scheme, not only the most inflexible firmness on his part, but a vigorous declaration from the princes of the empire in behalf of his title, was requisite, was willing to purchase their favour by gratifying them in every point that they deemed interesting or essential. 1555.

The Turks were ready to invade Hungary.

At the same time he stood in need of immediate and extraordinary aid from the Germanic body, as the Turks, after having wrested from him great part of his Hungarian territories, were ready to attack the provinces still subject to his authority with a formidable army, against which he could bring no equal force into the field. For this aid from Germany, he could not hope, if the internal peace of the empire were not established on a foundation solid in itself, and which should appear, even to the protestants, so secure and so permanent, as might not only allow them to engage in a distant war with safety, but might encourage them to act in it with vigour.

He is alarmed at some steps taken by the protestants.

A step taken by the protestants themselves, a short time after the opening of the diet, rendered him still more cautious of giving them any new cause of offence. As soon as the publication of Ferdinand's speech awakened the fears and suspicions which have been mentioned, the electors of Saxony and Brandenburg, together with the landgrave of Hesse, met at Naumburg; and confirming the ancient treaty of confraternity, which had long united their families, they added to it a new article, by which the contracting parties bound themselves to adhere to the confession of Augsburg, and to maintain the doctrine which it contained in their respective dominions[n].

Ferdinand zealous to

Ferdinand, influenced by all these considerations, employed his utmost address in conducting the deli-

[n] Chytræi Saxonia, p. 480.

1555. berations of the diet, so as not to excite the jealousy of a party on whose friendship he depended, and whose enmity, as they had not only taken the alarm, but had begun to prepare for their defence, he had so much reason to dread. The members of the diet readily agreed to Ferdinand's proposal of taking the state of religion into consideration, previous to any other business. But, as soon as they entered upon it, both parties discovered all the zeal and animosity which a subject so interesting naturally engenders, and which the rancour of controversy, together with the violence of civil war, had inflamed to the highest pitch.

promote an accommodation.

The protestants contended, that the security which they claimed, in consequence of the treaty of Passau, should extend, without limitation, to all who had hitherto embraced the doctrine of Luther, or who should hereafter embrace it. The catholics, having first of all asserted the pope's right as the supreme and final judge with respect to all articles of faith, declared, that though, on account of the present situation of the empire, and for the sake of peace, they were willing to confirm the toleration granted, by the treaty of Passau, to such as had already adopted the new opinions, they must insist that this indulgence should not be extended either to those cities which had conformed to the interim, or to such ecclesiastics as should, for the future, apostatize from the church of Rome. It was no easy matter to reconcile such opposite pretensions, which were supported, on each side, by the most elaborate arguments, and the greatest acrimony of expression, that the abilities or zeal of theologians long exercised in disputation could suggest. Ferdinand, however, by his address and perseverance; by softening some things on each side; by putting a favourable meaning upon others; by representing incessantly the necessity as well as the advantages of concord; and by threatening, on some

The pretensions of the catholics and protestants.

occasions, when all other considerations were disregarded, to dissolve the diet, brought them at length to a conclusion in which they all agreed. 1555.

Conformably to this, a recess was framed, approved of, and published with the usual formalities. The following are the chief articles which it contained: That such princes and cities as have declared their approbation of the confession of Augsburg shall be permitted to profess the doctrine and exercise the worship which it authorizes, without interruption or molestation from the emperor, the king of the Romans, or any power or person whatsoever; that the protestants, on their part, shall give no disquiet to the princes and states who adhere to the tenets and rites of the church of Rome; that, for the future, no attempt shall be made towards terminating religious differences, but by the gentle and pacific methods of persuasion and conference; that the popish ecclesiastics shall claim no spiritual jurisdiction in such states as receive the confession of Augsburg; that such as had seized the benefices or revenues of the church, previous to the treaty of Passau, shall retain possession of them, and be liable to no prosecution in the imperial chamber on that account; that the supreme civil power in every state shall have right to establish what form of doctrine and worship it shall deem proper, and, if any of its subjects refuse to conform to these, shall permit them to remove with all their effects whithersoever they shall please; that if any prelate or ecclesiastic shall hereafter abandon the Romish religion, he shall instantly relinquish his diocese or benefice, and it shall be lawful for those in whom the right of nomination is vested, to proceed immediately to an election, as if the office were vacant by death or translation, and to appoint a successor of undoubted attachment to the ancient system[o]. Sept. 25. The peace of religion established.

[o] Sleid. p. 620. F. Paul, p. 368. Pallav. P. ii. p. 161.

1555. Such are the capital articles in this famous recess, which is the basis of religious peace in Germany, and the bond of union among its various states, the sentiments of which are so extremely different with respect to points the most interesting as well as important. In our age and nation, to which the idea of toleration is familiar, and its beneficial effects well known, it may seem strange that a method of terminating their dissensions, so suitable to the mild and charitable spirit of the christian religion, did not sooner occur to the contending parties. But this expedient, however salutary, was so repugnant to the sentiments and practice of christians during many ages, that it did not lie obvious to discovery. Among the ancient heathens, all whose deities were local and tutelary, diversity of sentiment concerning the object or rites of religious worship seems to have been no source of animosity, because the acknowledging veneration to be due to any one god, did not imply denial of the existence or the power of any other god; nor were the modes and rites of worship established in one country incompatible with those which other nations approved of and observed. Thus the errours in their system of theology were of such a nature as to be productive of concord; and, notwithstanding the amazing number of their deities, as well as the infinite variety of their ceremonies, a sociable and tolerating spirit subsisted almost universally in the pagan world.

Reflections on the progress of the principles of toleration.

But when the christian revelation declared one supreme being to be the sole object of religious veneration, and prescribed the form of worship most acceptable to him, whoever admitted the truth of it held, of consequence, every other system of religion, as a deviation from what was established by divine authority, to be false and impious. Hence arose the zeal of the first converts to the christian faith in propagating its doctrines, and the ardour with which they laboured to overturn every other form of worship. They em-

ployed, however, for this purpose, no methods but such as suited the nature of religion. By the force of powerful arguments, they convinced the understandings of men; by the charms of superior virtue, they allured and captivated their hearts. At length the civil power declared in favour of christianity; and though numbers, imitating the example of their superiors, crowded into the church, many still adhered to their ancient superstitions. Enraged at their obstinacy, the ministers of religion, whose zeal was still unabated, though their sanctity and virtue were much diminished, forgot so far the nature of their own mission, and of the arguments which they ought to have employed, that they armed the imperial power against these unhappy men, and, as they could not persuade, they tried to compel them to believe. 1555.

At the same time, controversies concerning articles of faith multiplied, from various causes, among christians themselves, and the same unhallowed weapons which had first been used against the enemies of their religion, were turned against each other. Every zealous disputant endeavoured to interest the civil magistrate in his cause, and each, in his turn, employed the secular arm to crush or to exterminate his opponents. Not long after, the bishops of Rome put in their claim to infallibility in explaining articles of faith, and deciding points in controversy; and, bold as the pretension was, they, by their artifices and perseverance, imposed on the credulity of mankind, and brought them to recognise it. To doubt or to deny any doctrine to which these unerring instructers had given the sanction of their approbation, was held to be not only a resisting of truth, but an act of rebellion against their sacred authority; and the secular power, of which, by various arts, they had acquired the absolute direction, was instantly employed to avenge both.

Thus Europe had been accustomed, during many centuries, to see speculative opinions propagated or

1555. defended by force; the charity and mutual forbearance which christianity recommends with so much warmth, were forgotten; the sacred rights of conscience and of private judgment were unheard of; and not only the idea of toleration, but even the word itself, in the sense now affixed to it, was unknown. A right to extirpate errour by force, was universally allowed to be the prerogative of such as possessed the knowledge of truth; and as each party of christians believed that they had got possession of this invaluable attainment, they all claimed and exercised, as far as they were able, the rights which it was supposed to convey. The Roman catholics, as their system rested on the decisions of an infallible judge, never doubted that truth was on their side, and openly called on the civil power to repel the impious and heretical innovators who had risen up against it. The protestants, no less confident that their doctrine was well founded, required, with equal ardour, the princes of their party to check such as presumed to impugn it. Luther, Calvin, Cranmer, Knox, the founders of the reformed church in their respective countries, as far as they had power and opportunity, inflicted the same punishments upon such as called in question any article in their creeds, which were denounced against their own disciples by the church of Rome. To their followers, and, perhaps, to their opponents, it would have appeared a symptom of diffidence in the goodness of their cause, or an acknowledgment that it was not well founded, if they had not employed in its defence all those means which it was supposed truth had a right to employ.

It was towards the close of the seventeenth century, before toleration, under its present form, was admitted first into the republic of the United Provinces, and from thence introduced into England. Long experience of the calamities flowing from mutual persecution, the influence of free government, the light and humanity acquired by the progress of science, together

with the prudence and authority of the civil magistrate, were all requisite in order to establish a regulation, so repugnant to the ideas which all the different sects had adopted, from mistaken conceptions concerning the nature of religion and the rights of truth, or which all of them had derived from the erroneous maxims established by the church of Rome. 1555.

The recess of Augsburg, it is evident, was founded on no such liberal and enlarged sentiments concerning freedom of religious inquiry, or the nature of toleration. It was nothing more than a scheme of pacification, which political considerations alone had suggested to the contending parties, and regard for their mutual tranquillity and safety had rendered necessary. Of this there can be no stronger proof than an article in the recess itself, by which the benefits of the pacification are declared to extend only to the catholics on the one side, and to such as adhered to the confession of Augsburg on the other. The followers of Zuinglius and Calvin remained, in consequence of that exclusion, without any protection from the rigour of the laws denounced against heretics. Nor did they obtain any legal security, until the treaty of Westphalia, near a century after this period, provided, that they should be admitted to enjoy, in as ample a manner as the lutherans, all the advantages and protection which the recess of Augsburg affords. Advantages of the religious peace to the lutherans;

But if the followers of Luther were highly pleased with the security which they acquired by this recess, such as adhered to the ancient system had no less reason to be satisfied with that article in it, which preserved entire to the Roman catholic church the benefices of such ecclesiastics as should hereafter renounce its doctrines. This article, known in Germany by the name of the 'Ecclesiastical Reservation,' was apparently so conformable to the idea and to the rights of an established church, and it seemed so equitable to prevent and to the catholics.

1555. revenues, which had been originally appropriated for the maintenance of persons attached to a certain system, from being alienated to any other purpose, that the protestants, though they foresaw its consequences, were obliged to relinquish their opposition to it. As the Roman catholic princes of the empire have taken care to see this article exactly observed in every case where there was an opportunity of putting it in execution, it has proved the great barrier of the Romish church in Germany against the reformation; and as, from this period, the same temptation of interest did not allure ecclesiastics to relinquish the established system, there have been few of that order, who have loved truth with such disinterested and ardent affection, as, for its sake, to abandon the rich benefices which they had in possession.

Marcellus the second elected pope, April 9. His character.

During the sitting of the diet, Marcellus Cervino, Cardinal di Santa Croce, was elected pope in room of Julius. He, in imitation of Adrian, did not change his name on being exalted to the papal chair. As he equalled that pontiff in purity of intention, while he excelled him much in the arts of government, and still more in knowledge of the state and genius of the papal court; as he had capacity to discern what reformation it needed, as well as what it could bear; such regulations were expected from his virtue and wisdom, as would have removed many of its grossest and most flagrant corruptions, and have contributed towards reconciling to the church such as, from indignation at these enormities, had abandoned its communion. But this excellent pontiff was only shown to the church, and immediately snatched away. The confinement in the conclave had impaired his health, and the fatigue of tedious ceremonies upon his accession, together with too intense and anxious application of mind to the schemes of improvement which he meditated, exhausted so entirely the vigour of his feeble constitu-

His death.

tion, that he sickened on the twelfth, and died on the twentieth day after his election[p]. 1555.

The election of Paul the fourth.

All the refinements in artifice and intrigue, peculiar to conclaves, were displayed in that which was held for electing a successor to Marcellus; the cardinals of the imperial and French factions labouring, with equal ardour, to gain the necessary number of suffrages for one of their own party. But, after a struggle of no long duration, though conducted with all the warmth and eagerness natural to men contending for so great an object, they united in choosing John Peter Caraffa, the eldest member of the sacred college, and the son of count Montorio, a nobleman of an illustrious family in the kingdom of Naples. The address and influence of cardinal Farnese, who favoured his pretensions, Caraffa's own merit, and perhaps his great age, which soothed all the disappointed candidates with the near prospect of a new vacancy, concurred in bringing about this speedy union of suffrages. In order to testify his respect for the memory of Paul the third, by whom he had been created cardinal, as well as his gratitude to the family of Farnese, he assumed the name of Paul the fourth. May 23.

His rise and character.

The choice of a prelate of such a singular character, and who had long held a course extremely different from that which usually led to the dignity now conferred upon him, filled the Italians, who had nearest access to observe his manners and deportment, with astonishment, and kept them in suspense and solicitude with regard to his future conduct. Paul, though born in a rank of life which, without any other merit, might have secured to him the highest ecclesiastical preferments, had, from his early years, applied to study with all the assiduity of a man, who had nothing but his personal attainments to render him conspicuous. By means of this, he not only acquired profound skill in

[p] Thuan. p. 520. F. Paul, p. 365. Onuph. Panvin. p. 321, etc.

1555. scholastic theology, but added to that a considerable knowledge of the learned languages, and of polite literature, the study of which had been lately revived in Italy, and was pursued, at this time, with great ardour. His mind, however, naturally gloomy and severe, was more formed to imbibe the sour spirit of the former, than to receive any tincture of elegance or liberality of sentiment from the latter; so that he acquired rather the qualities and passions of a recluse ecclesiastic, than the talents necessary for the conduct of great affairs. Accordingly, when he entered into orders, although several rich benefices were bestowed upon him, and he was early employed as nuncio in different courts, he soon became disgusted with that course of life, and languished to be in a situation more suited to his taste and temper. With this view, he resigned at once all his ecclesiastical preferments; and having instituted an order of regular priests, whom he denominated 'theatines,' from the name of the archbishopric which he had held, he associated himself as a member of their fraternity, conformed to all the rigorous rules to which he had subjected them, and preferred the solitude of a monastic life, with the honour of being the founder of a new order, to all the great objects which the court of Rome presented to his ambition.

In this retreat he remained for many years, until Paul the third, induced by the fame of his sanctity and knowledge, called him to Rome, in order to consult with him concerning the measures which might be most proper and effectual for suppressing heresy, and reestablishing the ancient authority of the church. Having thus allured him from his solitude, the pope, partly by his entreaties, and partly by his authority, prevailed on him to accept of a cardinal's hat, to reassume the benefices which he had resigned, and to return again into the usual path of ecclesiastical ambition which he seemed to have relinquished. But

during two successive pontificates, under the first of which the court of Rome was the most artful and interested, and under the second the most dissolute of any in Europe, Caraffa retained his monastic austerity. He was an avowed and bitter enemy not only of all innovation in opinion, but of every irregularity in practice; he was the chief instrument in establishing the formidable and odious tribunal of the inquisition in the papal territories; he appeared a violent advocate, on all occasions, for the jurisdiction and discipline of the church, and a severe censurer of every measure which seemed to flow from motives of policy or interest, rather than from zeal for the honour of the ecclesiastical order and the dignity of the holy see. Under a prelate of such a character, the Roman courtiers expected a severe and violent pontificate, during which the principles of sound policy would be sacrificed to the narrow prejudices of priestly zeal; while the people of Rome were apprehensive of seeing the sordid and forbidding rigour of monastic manners substituted in place of the magnificence to which they had long been accustomed in the papal court. These apprehensions Paul was extremely solicitous to remove. At his first entrance upon the administration, he laid aside that austerity which had hitherto distinguished his person and family; and when the master of his household inquired in what manner he would choose to live, he haughtily replied, "As becomes a great prince." He ordered the ceremony of his coronation to be conducted with more than usual pomp; and endeavoured to render himself popular by several acts of liberality and indulgence towards the inhabitants of Rome [q]. 1555. The first steps of his administration.

His natural severity of temper, however, would have soon returned upon him, and would have justified the conjectures of the courtiers, as well as the fears of the people, if he had not, immediately after his election, The excess of his attachment to his nephews.

[q] Platina, p. 327. Castaldo, Vita di Paolo IV. Rom. 1615, p. 70.

1555. called to Rome two of his nephews, the sons of his brother, the count of Montorio. The eldest he promoted to be governor of Rome: the youngest, who had hitherto served as a soldier of fortune in the armies of Spain or France, and whose disposition as well as manners were still more foreign from the clerical character than his profession, he created a cardinal, and appointed him legate of Bologna, the second office in power and dignity which a pope can bestow. These marks of favour, no less sudden than extravagant, he accompanied with the most unbounded confidence and attachment; and, forgetting all his former severe maxims, he seemed to have no other object than the aggrandizing of his nephews. Their ambition, unfortunately for Paul, was too aspiring to be satisfied with any moderate acquisition. They had seen the family of Medici raised by the interest of the popes of that house to supreme power in Tuscany; Paul the third had, by his abilities and address, secured the dutchies of Parma and Placentia to the family of Farnese. They aimed at some establishment for themselves, no less considerable and independent; and as they could not expect that the pope would carry his indulgence towards them so far as to secularize any part of the patrimony of the church, they had no prospect of attaining what they wished, but by dismembering the imperial dominions in Italy, in hopes of seizing some portion of them. This alone they would have deemed a sufficient reason for sowing the seeds of discord between their uncle and the emperor.

Their ambitious projects.

But cardinal Caraffa had, besides, private reasons which filled him with hatred and enmity to the emperor. While he served in the Spanish troops he had not received such marks of honour and distinction as he thought due to his birth and merit. Disgusted with this ill usage, he had abruptly quitted the imperial service; and entering into that of France, he had not only met with such a reception as soothed his

Reasons of their disgust with the emperor.

vanity, and attached him to the French interest, but, by contracting an intimate friendship with Strozzi, who commanded the French army in Tuscany, he had imbibed a mortal antipathy to the emperor, as the great enemy to the liberty and independence of the Italian states. Nor was the pope himself indisposed to receive impressions unfavourable to the emperor. The opposition given to his election by the cardinals of the imperial faction, left in his mind deep resentment, which was heightened by the remembrance of ancient injuries from Charles or his ministers. 1555.

Of this his nephews took advantage, and employed various devices, in order to exasperate him beyond a possibility of reconciliation. They aggravated every circumstance which could be deemed any indication of the emperor's dissatisfaction with his promotion; they read to him an intercepted letter, in which Charles taxed the cardinals of his party with negligence or incapacity in not having defeated Paul's election: they pretended, at one time, to have discovered a conspiracy formed by the imperial minister and Cosmo de' Medici against the pope's life; they alarmed him, at another, with accounts of a plot for assassinating themselves. By these artifices, they kept his mind, which was naturally violent, and become suspicious from old age, in such perpetual agitation, as precipitated him into measures, which otherwise he would have been the first person to condemn[r]. He seized some of the cardinals who were most attached to the emperor, and confined them in the castle of St. Angelo; he persecuted the Colonnas and other Roman barons, the ancient retainers to the imperial faction, with the utmost severity; and, discovering, on all occasions, his distrust, fear, or hatred of the emperor, he began at last to court the friendship of the French king, and

They endeavour to alienate the pope from the emperor:

[r] Ripamontii Hist. Patriæ, lib. iii. 1146. ap. Græv. Thes. vol. ii. Mém. de Ribier, ii. p. 615. Adriani, Istor. i. p. 906.

1555. seemed willing to throw himself absolutely upon him for support and protection.

induce him to court the king of France.

This was the very point to which his nephews wished to bring him, as most favourable to their ambitious schemes; and as the accomplishment of these depended on their uncle's life, whose advanced age did not admit of losing a moment unnecessarily in negotiations, instead of treating at second hand with the French ambassador at Rome, they prevailed on the pope to despatch a person of confidence directly to the court of France, with such overtures on his part as they hoped would not be rejected. He proposed an alliance offensive and defensive between Henry and the pope; that they should attack the dutchy of Tuscany and the kingdom of Naples with their united forces; and if their arms should prove successful, that the ancient republican form of government should be reestablished in the former, and the investiture of the latter should be granted to one of the French king's sons, after reserving a certain territory which should be annexed to the patrimony of the church, together with an independent and princely establishment for each of the pope's nephews.

Constable Montmorency opposes the alliance with the pope.

The king, allured by these specious projects, gave a most favourable audience to the envoy. But when the matter was proposed in council, the constable Montmorency, whose natural caution and aversion to daring enterprises increased with age and experience, remonstrated with great vehemence against the alliance. He put Henry in mind how fatal to France every expedition into Italy had been during three successive reigns; and if such an enterprise had proved too great for the nation, even when its strength and finances were entire, there was no reason to hope for success, if it should be attempted now, when both were exhausted by extraordinary efforts during wars, which had lasted, with little interruption, almost half a century. He represented the manifest imprudence

of entering into engagements with a pope of fourscore, as any system which rested on no better foundation than his life must be extremely precarious, and upon the event of his death, which could not be distant, the face of things, together with the inclination of the Italian states, must instantly change, and the whole weight of the war be left upon the king alone. To these considerations he added the near prospect which they now had of a final accommodation with the emperor, who, having taken the resolution of retiring from the world, wished to transmit his kingdoms in peace to his son; and he concluded with representing the absolute certainty of drawing the arms of England upon France, if it should appear that the reestablishment of tranquillity in Europe was prevented by the ambition of its monarch. 1555.

The duke of Guise favours it.

These arguments, weighty in themselves, and urged by a minister of great authority, would probably have determined the king to decline any connexion with the pope. But the duke of Guise and his brother, the cardinal of Lorrain, who delighted no less in bold and dangerous undertakings than Montmorency shunned them, declared warmly for an alliance with the pope. The cardinal expected to be intrusted with the conduct of the negotiations in the court of Rome to which this alliance would give rise; the duke hoped to obtain the command of the army which would be appointed to invade Naples; and considering themselves as already in these stations, vast projects opened to their aspiring and unbounded ambition. Their credit, together with the influence of the king's mistress, the famous Diana of Poitiers who was, at that time, entirely devoted to the interest of the family of Guise, more than counterbalanced all Montmorency's prudent remonstrances, and prevailed on an inconsiderate prince to listen to the overtures of the pope's envoy.

Cardinal of Lorrain sent to ne-

The cardinal of Lorrain, as he had expected, was immediately sent to Rome with full powers to conclude the

1555. treaty, and to concert measures for carrying it into execution. Before he could reach that city, the pope, either from reflecting on the danger and uncertain issue of all military operations, or through the address of the imperial ambassador, who had been at great pains to sooth him, had not only begun to lose much of the ardour with which he had commenced the negotiation with France, but even discovered great unwillingness to continue it. In order to rouse him from this fit of despondency, and to rekindle his former rage, his nephews had recourse to the arts which they had already practised with so much success. They alarmed him with new representations of the emperor's hostile intentions, with fresh accounts which they had received of threats uttered against him by the imperial ministers, and with new discoveries which they pretended to have made of conspiracies formed, and just ready to take effect, against his life.

gotiate with the pope.

But these artifices, having been formerly tried, would not have operated a second time with the same force, nor have made the impression which they wished, if Paul had not been excited by an offence of that kind which he was least able to bear. He received advice of the recess of the diet of Augsburg, and of the toleration which was thereby granted to the protestants; and this threw him at once into such transports of passion against the emperor and king of the Romans, as carried him headlong into all the violent measures of his nephews. Full of high ideas with respect to the papal prerogative, and animated with the fiercest zeal against heresy, he considered the liberty of deciding concerning religious matters, which had been assumed by an assembly composed chiefly of laymen, as a presumptuous and unpardonable encroachment on that jurisdiction which belonged to him alone; and regarded the indulgence which had been given to the protestants as an impious act of that power which the diet had usurped. He complained loudly of both

Paul enraged at the proceedings of the diet of Augsburg,

to the imperial ambassador. He insisted that the recess of the diet should immediately be declared illegal and void. He threatened the emperor and king of the Romans, in case they should either refuse or delay to gratify him in this particular, with the severest effects of his vengeance. He talked in a tone of authority and command which might have suited a pontiff of the twelfth century, when a papal decree was sufficient to have shaken, or to have overturned, the throne of the greatest monarch in Europe; but which was altogether improper in that age, especially when addressed to the minister of a prince who had so often made pontiffs more formidable than Paul feel the weight of his power. The ambassador, however, heard all his extravagant propositions and menaces with much patience, and endeavoured to sooth him, by putting him in mind of the extreme distress to which the emperor had been reduced at Inspruck, of the engagements which he had come under to the protestants in order to extricate himself, of the necessity of fulfilling these, and of accommodating his conduct to the situation of his affairs. But weighty as these considerations were, they made no impression on the mind of the haughty and bigoted pontiff, who instantly replied: That he would absolve him, by his apostolic authority, from those impious engagements, and even command him not to perform them; that, in carrying on the cause of God and of the church, no regard ought to be had to the maxims of worldly prudence and policy; and that the ill success of the emperor's schemes in Germany might justly be deemed a mark of the divine displeasure against him, on account of his having paid little attention to the former, while he regulated his conduct entirely by the latter. Having said this, he turned from the ambassador abruptly without waiting for a reply. 1555.

and exasperated by his nephews;

His nephews took care to applaud and cherish these sentiments, and easily wrought up his arrogant mind,

1555. fraught with all the monkish ideas concerning the extent of the papal supremacy, to such a pitch of resentment against the house of Austria, and to such an high opinion of his own power, that he talked continually of his being the successor of those who had deposed kings and emperors; that he was exalted as head over them all, and would trample such as opposed him under his feet. In this disposition the cardinal of Lorrain found the pope, and easily persuaded him to sign a treaty, which had for its object, the ruin of a prince against whom he was so highly exasperated. The stipulations in the treaty were much the same as had been proposed by the pope's envoy at Paris; and it was agreed to keep the whole transaction secret, until their united forces should be ready to take the field[s].

Dec. 15. concludes a treaty with France.

The emperor resolves to resign his hereditary dominions.

During the negotiation of this treaty at Rome and Paris, an event happened which seemed to render the fears that had given rise to it vain, and the operations which were to follow upon it unnecessary. This was the emperor's resignation of his hereditary dominions to his son Philip; together with his resolution to withdraw entirely from any concern in business or the affairs of this world, in order that he might spend the remainder of his days in retirement and solitude. Though it requires neither deep reflection nor extraordinary discernment to discover that the state of royalty is not exempt from cares and disappointment; though most of those who are exalted to a throne find solicitude, and satiety, and disgust, to be their perpetual attendants in that envied preeminence; yet, to descend voluntarily from the supreme to a subordinate station, and to relinquish the possession of power in order to attain the enjoyment of happiness, seems to be an effort too great for the human mind. Several

[s] Pallav. lib. xiii. 163. F. Paul, p. 365. Thuan. lib. xv. 525. lib. xvi. 540. Mém. de Ribier, ii. p. 609. etc.

instances, indeed, occur in history, of monarchs who have quitted a throne, and have ended their days in retirement. But they were either weak princes, who took this resolution rashly, and repented of it as soon as it was taken; or unfortunate princes, from whose hands some stronger rival had wrested their sceptre, and compelled them to descend with reluctance into a private station. Diocletian is, perhaps, the only prince capable of holding the reins of government, who ever resigned them from deliberate choice, and who continued during many years to enjoy the tranquillity of retirement without fetching one penitent sigh, or casting back one look of desire, towards the power or dignity which he had abandoned. 1555.

The motives of this resignation.

No wonder, then, that Charles's resignation should fill all Europe with astonishment, and give rise, both among his contemporaries, and among the historians of that period, to various conjectures concerning the motives which determined a prince, whose ruling passion had been uniformly the love of power, at the age of fifty-six, when objects of ambition continue to operate with full force on the mind, and are pursued with the greatest ardour, to take a resolution so singular and unexpected. But while many authors have imputed it to motives so frivolous and fantastical, as can hardly be supposed to influence any reasonable mind; while others have imagined it to be the result of some profound scheme of policy; historians more intelligent, and better informed, neither ascribe it to caprice, nor search for mysterious secrets of state, where simple and obvious causes will fully account for the emperor's conduct. Charles had been attacked early in life with the gout; and, notwithstanding all the precautions of the most skilful physicians, the violence of the distemper increased as he advanced in age, and the fits became every year more frequent, as well as more severe. Not only was the vigour of his constitution broken, but the faculties of his mind were impaired by the

1555. excruciating torments which he endured. During the continuance of the fits, he was altogether incapable of applying to business; and even when they began to abate, as it was only at intervals that he could attend to what was serious, he gave up a great part of his time to trifling and even childish occupations, which served to relieve or to amuse his mind, enfeebled and worn out with excess of pain. Under these circumstances, the conduct of such affairs as occurred, of course, in governing so many kingdoms, was a burthen more than sufficient; but to push forward and complete the vast schemes, which the ambition of his more active years had formed, or to keep in view and carry on the same great system of policy, extending to every nation in Europe, and connected with the operations of every different court, were functions, which so far exceeded his strength, that they oppressed and overwhelmed his mind. As he had been long accustomed to view the business of every department, whether civil, or military, or ecclesiastical, with his own eyes, and to decide concerning it according to his own ideas, it gave him the utmost pain, when he felt his infirmities increase so fast upon him, that he was obliged to commit the conduct of all affairs to his ministers. He imputed every misfortune which befell him, and every miscarriage that happened, even when the former was unavoidable or the latter accidental, to his inability to take the inspection of business himself. He complained of his hard fortune, in being opposed, in his declining years, to a rival who was in the full vigour of life; and that, while Henry could take and execute all his resolutions in person, he should now be reduced, both in council and in action, to rely on the talents and exertions of other men. Having thus grown old before his time, he wisely judged it more decent to conceal his infirmities in some solitude, than to expose them any longer to the public eye; and prudently determined not to forfeit

the fame, or lose the acquisitions of his better years, by struggling, with a vain obstinacy, to retain the reins of government, when he was no longer able to hold them with steadiness, or to guide them with address[t]. 1555.

But though Charles had revolved this scheme in his mind for several years, and had communicated it to his sisters, the dowager queens of France and Hungary, who not only approved of his intention, but offered to accompany him to whatever place of retreat he should choose; several things had hitherto prevented his carrying it into execution. He could not think of loading his son with the government of so many kingdoms, until he should attain such maturity of age, and of abilities, as would enable him to sustain that weighty burthen. But as Philip had now reached his twenty-eighth year, and had been early accustomed to business, for which he discovered both inclination and capacity, it can hardly be imputed to the partiality Circumstances which retarded it.

[t] Dom Lévesque, in his memoirs of cardinal Granvelle, gives a reason for the emperor's resignation, which, as far as I recollect, is not mentioned by any other historian. He says, that the emperor having ceded the government of the kingdom of Naples and the dutchy of Milan to his son, upon his marriage with the queen of England; Philip, notwithstanding the advice and entreaties of his father, removed most of the ministers and officers whom he had employed in those countries, and appointed creatures of his own to fill the places which they held. That he aspired openly, and with little delicacy, to obtain a share in the administration of affairs in the Low Countries. That he endeavoured to thwart the emperor's measures, and to limit his authority, behaving towards him sometimes with inattention, and sometimes with haughtiness. That Charles, finding that he must either yield, on every occasion, to his son, or openly contend with him; in order to avoid either of these, which were both disagreeable and mortifying to a father, he took the resolution of resigning his crowns, and of retiring from the world, vol. i. p. 24, etc. Dom Lévesque derived his information concerning these curious facts, which he relates very briefly, from the original papers of cardinal Granvelle. But as that vast collection of papers, which has been preserved and arranged by M. l'abbé Boizot of Besançon, though one of the most valuable historical monuments of the sixteenth century, and which cannot fail of throwing much light on the transactions of Charles the fifth, is not published, I cannot determine what degree of credit should be given to this account of Charles's resignation. I have, therefore, taken no notice of it in relating this event.

1555. of paternal affection, that his scruples, with regard to this point, were entirely removed; and that he thought he might place his son, without farther hesitation or delay, on the throne which he himself was about to abandon. His mother's situation had been another obstruction in his way. For although she had continued almost fifty years in confinement, and under the same disorder of mind which concern for her husband's death had brought upon her, yet the government of Spain was still vested in her jointly with the emperor; her name was inserted, together with his, in all the public instruments issued in that kingdom; and such was the fond attachment of the Spaniards to her, that they would probably have scrupled to recognise Philip as their sovereign, unless she had consented to assume him as her partner on the throne. Her utter incapacity for business rendered it impossible to obtain her consent. But her death, which happened this year, removed this difficulty; and as Charles, upon that event, became sole monarch of Spain, it left the succession open to his son. The war with France had likewise been a reason for retaining the administration of affairs in his own hand, as he was extremely solicitous to have terminated it, that he might have given up his kingdoms to his son at peace with all the world. But as Henry had discovered no disposition to close with any of his overtures, and had even rejected proposals of peace, which were equal and moderate, in a tone that seemed to indicate a fixed purpose of continuing hostilities, he saw that it was vain to wait longer in expectation of an event, which, however desirable, was altogether uncertain.

The formalities with which he executed it.

As this, then, appeared to be the proper juncture for executing the scheme which he had long meditated, Charles resolved to resign his kingdoms to his son, with a solemnity suitable to the importance of the transaction, and to perform this last act of sovereignty, with such formal pomp, as might leave a lasting im-

pression on the minds not only of his subjects but of his successor. With this view, he called Philip out of England, where the peevish temper of his queen, which increased with her despair of having issue, rendered him extremely unhappy; and the jealousy of the English left him no hopes of obtaining the direction of their affairs. Having assembled the states of the Low Countries at Brussels, on the twenty-fifth of October, Charles seated himself, for the last time, in the chair of state, on one side of which was placed his son, and on the other his sister, the queen of Hungary, regent of the Netherlands, with a splendid retinue of the princes of the empire and grandees of Spain standing behind him. The president of the council of Flanders, by his command, explained, in a few words, his intention in calling this extraordinary meeting of the states. He then read the instrument of resignation, by which Charles surrendered to his son Philip all his territories, jurisdiction, and authority in the Low Countries, absolving his subjects there from the oath of allegiance to him, which he required them to transfer to Philip his lawful heir, and to serve him with the same loyalty and zeal which they had manifested, during so long a course of years, in support of his government. 1555.

Charles then rose from his seat; and leaning on the shoulder of the prince of Orange, because he was unable to stand without support, he addressed himself to the audience, and from a paper which he held in his hand, in order to assist his memory, he recounted, with dignity, but without ostentation, all the great things which he had undertaken and performed since the commencement of his administration. He observed, that from the seventeenth year of his age he had dedicated all his thoughts and attention to public objects, reserving no portion of his time for the indulgence of his ease, and very little for the enjoyment of private pleasure; that, either in a pacific or hostile manner, he had visited Germany nine times, Spain six times,

1555. France four times, Italy seven times, the Low Countries ten times, England twice, Africa as often, and had made eleven voyages by sea; that, while his health permitted him to discharge his duty, and the vigour of his constitution was equal, in any degree, to the arduous office of governing such extensive dominions, he had never shunned labour, nor repined under fatigue; that now, when his health was broken, and his vigour exhausted by the rage of an incurable distemper, his growing infirmities admonished him to retire; nor was he so fond of reigning, as to retain the sceptre in an impotent hand, which was no longer able to protect his subjects, or to secure to them the happiness which he wished they should enjoy; that, instead of a sovereign, worn out with diseases, and scarcely half alive, he gave them one in the prime of life, accustomed already to govern, and who added to the vigour of youth all the attention and sagacity of maturer years; that if, during the course of a long administration, he had committed any material errour in government, or if, under the pressure of so many and great affairs, and amidst the attention which he had been obliged to give to them, he had either neglected or injured any of his subjects, he now implored their forgiveness; that, for his part, he should ever retain a grateful sense of their fidelity and attachment, and would carry the remembrance of it along with him to the place of his retreat, as his sweetest consolation, as well as the best reward for all his services, and in his last prayers to Almighty God would pour forth his most earnest petitions for their welfare.

Then turning towards Philip, who fell on his knees and kissed his father's hand,—"If," says he, "I had left you by my death this rich inheritance, to which I have made such large additions, some regard would have been justly due to my memory on that account; but now, when I voluntarily resign to you what I might have still retained, I may well expect the warm-

est expressions of thanks on your part. With these, 1555.
however, I dispense, and shall consider your concern for the welfare of your subjects, and your love of them, as the best and most acceptable testimony of your gratitude to me. It is in your power, by a wise and virtuous administration, to justify the extraordinary proof which I, this day, give of my paternal affection and to demonstrate that you are worthy of the confidence which I repose in you. Preserve an inviolable regard for religion; maintain the catholic faith in its purity; let the laws of your country be sacred in your eyes; encroach not on the rights and privileges of your people; and if the time should ever come, when you shall wish to enjoy the tranquillity of private life, may you have a son endowed with such qualities, that you can resign your sceptre to him, with as much satisfaction as I give up mine to you."

As soon as Charles had finished this long address to his subjects and to their new sovereign, he sunk into the chair, exhausted and ready to faint with the fatigue of such an extraordinary effort. During his discourse, the whole audience melted into tears, some from admiration of his magnanimity, others softened by the expressions of tenderness towards his son, and of love to his people; and all were affected with the deepest sorrow at losing a sovereign, who, during his administration, had distinguished the Netherlands, his native country, with particular marks of his regard and attachment.

Philip then arose from his knees, and after returning thanks to his father, with a low and submissive voice, for the royal gift which his unexampled bounty had bestowed upon him, he addressed the assembly of the states, and regretting his inability to speak the Flemish language with such facility as to express what he felt on this interesting occasion, as well as what he owed to his good subjects in the Netherlands, he begged that they would permit Granvelle, bishop of Arras, to

1555. deliver what he had given him in charge to speak in his name. Granvelle, in a long discourse, expatiated on the zeal with which Philip was animated for the good of his subjects, on his resolution to devote all his time and talents to the promoting of their happiness, and on his intention to imitate his father's example in distinguishing the Netherlands with peculiar marks of his regard. Maës, a lawyer of great eloquence, replied, in the name of the states, with large professions of their fidelity and affection to their new sovereign.

1556. January 6. Then Mary, queen dowager of Hungary, resigned the regency, with which she had been intrusted by her brother during the space of twenty-five years. Next day Philip, in presence of the states, took the usual oaths to maintain the rights and privileges of his subjects; and all the members, in their own name, and in that of their constituents, swore allegiance to him[u].

A few weeks after this transaction, Charles, in an assembly no less splendid, and with a ceremonial equally pompous, resigned to his son the crowns of Spain, with all the territories depending on them, both in the old and in the new world. Of all these vast possessions, he reserved nothing for himself but an annual pension of an hundred thousand crowns, to defray the charges of his family, and to afford him a small sum for acts of beneficence and charity[x].

[u] Godleveus, Relatio Abdicationis Car. V. ap. Goldast. Polit. Imper. p. 377. Strada de Bello Belgico, lib. i. 5.

[x] The emperor's resignation is an event not only of such importance, but of such a nature, that the precise date of it, one would expect, should have been ascertained by historians with the greatest accuracy. There is, however, an amazing and unaccountable diversity among them with regard to this point. All agree, that the deed by which Charles transferred to his son his dominions in the Netherlands, bears date at Brussels the 25th of October. Sandoval fixes on the 28th of October as the day on which the ceremony of resignation happened, and he was present at the transaction, vol. ii. 592. Godleveus, who published a treatise de Abdicatione Caroli Quinti, fixes the public ceremony, as well as the date of the instrument of resignation, on the 25th. Père Barre, I know not on what authority, fixes it on the 24th of November. Hist. d'Allem. viii. p. 976. Herrera agrees

1556.

As he had fixed on a place of retreat in Spain, hoping that the dryness and the warmth of the climate in that country might mitigate the violence of his disease, which had been much increased by the moisture of the air and the rigour of the winters in the Netherlands; he was extremely impatient to embark for that kingdom, and to disengage himself entirely from business, which he found to be impossible while he remained in Brussels. But his physicians remonstrated so strongly against his venturing to sea, at that cold and boisterous season of the year, that he consented, though with reluctance, to put off his voyage for some months.

Resolves to fix his residence in Spain.

Obliged to remain for some time in the Netherlands.

By yielding to their entreaties, he had the satisfaction, before he left the Low Countries, of taking a considerable step towards a peace with France, which he ardently wished for, not only on his son's account, but that he might have the merit, when quitting the

Promotes the negotiation for peace.

with Godleveus in his account of this matter, tom. i. 155: as likewise does Pallavicini, whose authority with respect to dates, and every thing where a minute accuracy is requisite, is of great weight. Hist. lib. xvi. 168. Historians differ no less with regard to the day on which Charles resigned the crown of Spain to his son. According to M. de Thou, it was a month after his having resigned his dominions in the Netherlands, i. e. about the 25th of November. Thuan. lib. xvi. 571. According to Sandoval, it was on the 16th of January, 1556. Sand. ii. p. 603. Antonio de Vera agrees with him, Epitome de la Vida de Car. V. p. 110. According to Pallavicini, it was on the 17th, Pal. lib. xvi. 168, and with him Herrera agrees, Vida de D. Filipo, tom. i. 233. But Férréras fixes it on the first day of January, Hist. Génér. tom. ix. 371. M. de Beaucaire supposes the resignation of the crown of Spain to have been executed a few days after the resignation of the Netherlands. Com. de Reb. Gall. p. 879. It is remarkable, that in the treaty of truce at Vaucelles, though Charles had made over all his dominions to his son some weeks previous to the conclusion of it, all the stipulations are in the emperor's name, and Philip is only styled king of England and Naples. It is certain Philip was not proclaimed king of Castile, etc. at Valladolid, sooner than the 24th of March, Sandov. ii. p. 606. and previous to that ceremony he did not choose, it should seem, to assume the title of king of any of his Spanish kingdoms, or to perform any act of royal jurisdiction. In a deed annexed to the treaty of truce, dated April 19, he assumes the title of king of Castile, etc. in the usual style of the Spanish monarchs in that age. Corps Dipl. tom. iv. Append. 85.

1556. world, of reestablishing that tranquillity in Europe, which he had banished out of it almost from the time that he assumed the administration of affairs. Previous to his resignation, commissioners had been appointed by him and by the French king, in order to treat of an exchange of prisoners. In their conferences at the abbey of Vaucelles, near Cambray, an expedient was accidentally proposed for terminating hostilities between the contending monarchs, by a long truce, during the subsistence of which, and without discussing their respective claims, each should retain what was now in his possession. Charles, sensible how much his kingdoms were exhausted by the expensive and almost continual wars in which his ambition had engaged him, and eager to gain for his son a short interval of peace, that he might establish himself firmly on his throne, declared warmly for closing with the overture, though manifestly dishonourable as well as disadvantageous; and such was the respect due to his wisdom and experience, that Philip, notwithstanding his unwillingness to purchase peace by such concessions, did not presume to urge his opinion in opposition to that of his father.

A truce concluded:

Henry could not have hesitated one moment about giving his consent to a truce, on such conditions as would leave him in quiet possession of the greater part of the duke of Savoy's dominions, together with the important conquests which he had made on the German frontier. But it was no easy matter to reconcile such a step with the engagements which he had come under to the pope, in his late treaty with him. The constable Montmorency, however, represented in such a striking light the imprudence of sacrificing the true interests of his kingdom to these rash obligations, and took such advantage of the absence of the cardinal of Lorrain, who had seduced the king into his alliance with the Caraffas, that Henry, who was naturally fluctuating and unsteady, and apt to be influenced by the

advice last given him, authorized his ambassadors to sign a treaty of truce with the emperor for five years, on the terms which had been proposed. But that he might not seem to have altogether forgotten his ally the pope, who, he foresaw, would be highly exasperated, he, in order to sooth him, took care that he should be expressly included in the truce[y]. 1556. 5th Feb.

The count of Lalain repaired to Blois, and the admiral de Coligny to Brussels; the former to be present when the king of France, and the latter when the emperor and his son, ratified the treaty and bound themselves by oath to observe it[z]. When an account of the conferences at Vaucelles, and of the conditions of truce which had been proposed there, was first carried to Rome, it gave the pope no manner of disquiet. He trusted so much to the honour of the French monarch, that he would not allow himself to think that Henry could forget so soon, or violate so shamefully, all the stipulations in his league with him. He had such an high opinion of the emperor's wisdom, that he made no doubt of his refusing his consent to a truce on such unequal terms; and on both these accounts he confidently pronounced that this, like many preceding negotiations, would terminate in nothing. But later and more certain intelligence soon convinced him, that no reasoning in political affairs is more fallacious, than, because an event is improbable, to conclude that it will not happen. The sudden and unexpected conclusion of the truce filled Paul with astonishment and terrour. The cardinal of Lorrain durst not encounter that storm of indignation, to which he knew that he should be

ratified by both monarchs.

The pope's astonishment and distress.

[y] Mém. de Ribier, ii. p. 626. Corps Diplom. tom. iv. App. 81.

[z] One of admiral de Coligny's attendants, who wrote to the court of France an account of what happened while they resided at Brussels, takes notice, as an instance of Philip's unpoliteness, that he received the French ambassador in an apartment hung with tapestry, which represented the battle of Pavia, the manner in which Francis the first was taken prisoner, his voyage to Spain, with all the mortifying circumstances of his captivity and imprisonment at Madrid. Mém. de Ribier, ii. p. 634.

1556. exposed from the haughty pontiff, who had so good reason to be incensed; but departing abruptly from Rome, he left to the cardinal Tournon the difficult task of attempting to sooth Paul and his nephews. They were fully sensible of the perilous situation in which they now stood. By their engagements with France, which were no longer secret, they had highly irritated Philip. They dreaded the violence of his implacable temper. The duke of Alva, a minister fitted, as well by his abilities as by the severity of his nature, for executing all Philip's rigorous schemes, had advanced from Milan to Naples, and began to assemble troops on the frontiers of the ecclesiastical state; while they, if deserted by France, must not only relinquish all the hopes of dominion and sovereignty to which their ambition aspired, but remain exposed to the resentment of the Spanish monarch, without one ally to protect them against an enemy with whom they were so little able to contend.

He attempts to rekindle the war.

Under these circumstances, Paul had recourse to the arts of negotiation and intrigue; of which the papal court knows well how to avail itself in order to ward off any calamity threatened by an enemy superior in power. He affected to approve highly of the truce, as an happy expedient for putting a stop to the effusion of christian blood. He expressed his warmest wishes that it might prove the forerunner of a definitive peace. He exhorted the rival princes to embrace this favourable opportunity of setting on foot a negotiation for that purpose, and offered, as their common father, to be mediator between them. Under this pretext, he appointed cardinal Rebiba his nuncio to the court of Brussels, and his nephew, cardinal Caraffa, to that of Paris. The public instructions given to both were the same; that they should use their utmost endeavours to prevail with the two monarchs to accept of the pope's mediation, that, by means of it, peace might be reestablished, and measures might be taken for as-

sembling a general council. But under this specious appearance of zeal for attaining objects so desirable in themselves, and so becoming his sacred character to pursue, Paul concealed very different intentions. Caraffa, besides his public instructions, received a private commission to solicit the French king to renounce the treaty of truce, and to renew his engagements with the holy see; and he was empowered to spare neither entreaties, nor promises, nor bribes, in order to gain that point. This, both the uncle and the nephew considered as the real end of the embassy; while the other served to amuse the vulgar, or to deceive the emperor and his son. The cardinal accordingly set out instantly for Paris, and travelled with the greatest expedition, while Rebiba was detained some weeks at Rome; and when it became necessary for him to begin his journey, he received secret orders to protract it as much as possible, that the issue of Caraffa's negotiation might be known before he should reach Brussels, and according to that, proper directions might be given to him with regard to the tone which he should assume, in treating with the emperor and his son[a]. 1556. 11th May.

His negotiations for that purpose.

Caraffa made his entry into Paris with extraordinary pomp; and having presented a consecrated sword to Henry, as the protector, on whose aid the pope relied in the present exigency, he besought him not to disregard the entreaties of a parent in distress, but to employ that weapon which he gave him in his defence. This he represented not only as a duty of filial piety, but as an act of justice. As the pope, from confidence in the assistance and support which his late treaty with France entitled him to expect, had taken such steps as had irritated the king of Spain, he conjured Henry not to suffer Paul and his family to be crushed under the weight of that resentment, which they had drawn on themselves merely by their attachment to France. To-

[a] Pallav. lib. xiii. 169. Burnet, Hist. of Reform. ii. App. p. 309.

1556. gether with this argument addressed to his generosity, he employed another which he hoped would work on his ambition. He affirmed that now was the time, when, with the most certain prospect of success, he might attack Philip's dominions in Italy; that the flower of the veteran Spanish bands had perished in the wars of Hungary, Germany, and the Low Countries; that the emperor had left his son an exhausted treasury, and kingdoms drained of men; that he had no longer to contend with the abilities, the experience, and good fortune of Charles, but with a monarch scarcely seated on his throne, unpractised in command, odious to many of the Italian states, and dreaded by all. He promised that the pope, who had already levied soldiers, would bring a considerable army into the field, which, when joined by a sufficient number of French troops, might, by one brisk and sudden effort, drive the Spaniards out of Naples, and add to the crown of France a kingdom, the conquest of which had been the great object of all his predecessors during half a century, and the chief motive of all their expeditions into Italy.

Their effect. July 31. Every word Caraffa spoke made a deep impression on Henry; conscious, on the one hand, that the pope had just cause to reproach him with having violated the laws not only of generosity but of decency, when he renounced his league with him, and had agreed to the truce of Vaucelles; and eager, on the other hand, not only to distinguish his reign by a conquest, which three former monarchs had attempted without success, but likewise to acquire an establishment of such dignity and value for one of his sons. Reverence, however, for the oath by which he had so lately confirmed the truce of Vaucelles; the extreme old age of the pope, whose death might occasion an entire revolution in the political system of Italy; together with the representations of Montmorency, who repeated all the arguments he had used against the first league with

Paul, and pointed out the great and immediate advantages which France derived from the truce, kept Henry for some time in suspense, and might possibly have outweighed all Caraffa's arguments. But the cardinal was not such a novice in the arts of intrigue and negotiation, as not to have expedients ready for removing or surmounting all these obstacles. To obviate the king's scruple with regard to his oath, he produced powers from the pope to absolve him from the obligation of it. By way of security against any danger which he might apprehend from the pope's death, he engaged that his uncle would make such a nomination of cardinals, as should give Henry the absolute command of the next election, and enable him to place in the papal chair a person entirely devoted to his interest. 1556.

In order to counterbalance the effect of the constable's opinion and influence, he employed not only the active talents of the duke of Guise, and the eloquence of his brother, the cardinal of Lorrain, but the address of the queen, aided by the more powerful arts of Diana of Poitiers, who, unfortunately for France, cooperated with Catharine in this point, though she took pleasure, on almost every other occasion, to thwart and mortify her. They, by their united solicitations, easily swayed the king, who leaned, of his own accord, to that side, towards which they wished him to incline. All Montmorency's prudent remonstrances were disregarded; the nuncio absolved Henry from his oath; and he signed a new league with the pope, which rekindled the flames of war both in Italy and in the Low Countries. July 31.

The pope's violent proceedings against Philip.

As soon as Paul was informed by his nephew that there was a fair prospect of his succeeding in this negotiation, he despatched a messenger after the nuncio Rebiba, with orders to return to Rome, without proceeding to Brussels. As it was now no longer necessary to preserve that tone of moderation, which

1556. suited the character of a mediator, and which he had affected to assume, or to put any farther restraint upon his resentment against Philip, he boldly threw off the mask, and took such violent steps as rendered a rupture unavoidable. He seized and imprisoned the Spanish envoy at his court. He excommunicated the Colonnas; and having deprived Marco Antonio, the head of that family, of the dukedom of Paliano, he granted that dignity, together with the territory annexed to it, to his nephew, the count of Montorio. He ordered a legal information to be presented in the consistory of cardinals against Philip, setting forth that he, notwithstanding the fidelity and allegiance due by him to the holy see, of which he held the kingdom of Naples, had not only afforded a retreat in his dominions to the Colonnas, whom the pope had excommunicated and declared rebels, but had furnished them with arms, and was ready, in conjunction with them, to invade the ecclesiastical state in an hostile manner; that such conduct in a vassal was to be deemed treason against his liege lord, the punishment of which was the forfeiture of his fief. Upon this, the consistorial advocate requested the pope to take cognizance of the cause, and to appoint a day for hearing of it, when he would make good every article of the charge, and expect from his justice that sentence which the heinousness of Philip's crimes merited. Paul, whose pride was highly flattered with the idea of trying and passing judgment on so great a king, assented to his request; and, as if it had been no less easy to execute than to pronounce such a sentence, declared that he would consult with the cardinals concerning the formalities requisite in conducting the trial[b].

July 27.

But while Paul allowed his pride and resentment to drive him on with such headlong impetuosity, Philip discovered an amazing moderation on his part. He

[b] Pallav. lib. xiii. 171.

had been taught by the Spanish ecclesiastics, who had the charge of his education, a profound veneration for the holy see. This sentiment, which had been early infused, grew up with him as he advanced in years, and took full possession of his mind, which was naturally thoughtful, serious, and prone to superstition. When he foresaw a rupture with the pope approaching, he had such violent scruples with respect to the lawfulness of taking arms against the vicegerent of Christ, and the common father of all christians, that he consulted some Spanish divines upon that point. They, with the usual dexterity of casuists in accommodating their responses to the circumstances of those who apply to them for direction, assured him that, after employing prayers and remonstrances in order to bring the pope to reason, he had full right, both by the laws of nature and of christianity, not only to defend himself when attacked, but to begin hostilities, if that were judged the most proper expedient for preventing the effects of Paul's violence and injustice. Philip, nevertheless, continued to deliberate and delay, considering it as a most cruel misfortune, that his administration should open with an attack on a person, whose sacred function and character he so highly respected[c].

1556.

Philip's superstitious scruples.

At last the duke of Alva, who, in compliance with his master's scruples, had continued to negotiate long after he should have begun to act, finding Paul inexorable, and that every overture of peace, and every appearance of hesitation on his part, increased the pontiff's natural arrogance, took the field and entered the ecclesiastical territories. His army did not exceed twelve thousand men; but it was composed of veteran soldiers, and commanded chiefly by those Roman barons, whom Paul's violence had driven into exile. The valour of the troops, together with the animosity

The duke of Alva takes the field against the pope, Sept. 5.

[c] Férrér. Hist. d'Espagne, ix. p. 373. Herrera, i. p. 308.

1556. of their leaders, who fought in their own quarrel, and to recover their own estates, supplied the want of numbers. As none of the French forces were yet arrived, Alva soon became master of the Campagna Romana; some cities being surrendered through the cowardice of the garrisons, which consisted of raw soldiers ill-disciplined and worse commanded; the gates of others being opened by the inhabitants, who were eager to receive back their ancient masters. Alva, that he might not be taxed with impiety in seizing the patrimony of the church, took possession of the towns which capitulated, in the name of the college of cardinals, to which, or to the pope that should be chosen to succeed Paul, he declared that he would immediately restore them.

A truce between the pope and Philip.

The rapid progress of the Spaniards, whose light troops made excursions even to the gates of Rome, filled that city with consternation. Paul, though inflexible and undaunted himself, was obliged to give way so far to the fears and solicitations of the cardinals, as to send deputies to Alva in order to propose a cessation of arms. The pope yielded the more readily, as he was sensible of a double advantage which might be derived from obtaining that point. It would deliver the inhabitants of Rome from their present terrour, and would afford time for the arrival of the succours which he expected from France. Nor was Alva unwilling to close with the overture, both as he knew how desirous his master was to terminate a war which he had undertaken with reluctance, and as his army was so much weakened by garrisoning the great number of towns which he had reduced, that it was hardly in a condition to keep the field without fresh recruits.

Nov. 19. A truce was accordingly concluded first for ten, and afterwards for forty days, during which various schemes of peace were proposed, and perpetual negotiations were carried on, but with no sincerity on the part of the pope. The return of his nephew the cardinal to

Rome, the receipt of a considerable sum remitted by the king of France, the arrival of one body of French troops, together with the expectation of others which had begun their march, rendered him more arrogant than ever, and banished all thoughts from his mind, but those of war and revenge[c]. 1556.

[c] Pallav. lib. xiii. 177. Thuan. lib. xvii. 588. Mém. de Ribier, ii. p. 664.

THE HISTORY

OF

THE REIGN OF THE EMPEROR

CHARLES THE FIFTH.

THE TWELFTH BOOK.

1556. WHILE these operations or intrigues kept the pope and Philip busy and attentive, the emperor disentangled himself finally from all the affairs of this world, and set out for the place of his retreat. He had hitherto retained the imperial dignity, not from any unwillingness to relinquish it; for, after having resigned the real and extensive authority that he enjoyed in his hereditary dominions, to part with the limited and often ideal jurisdiction, which belongs to an elective crown, was no great sacrifice. His sole motive for delay was to gain a few months, for making one trial more, in order to accomplish his favourite scheme in behalf of his son. At the very time Charles seemed to be most sensible of the vanity of worldly grandeur, and when he appeared to be quitting it not only with indifference, but with contempt, the vast schemes of ambition, which had so long occupied and engrossed his mind, still kept possession of it. He could not think of leaving his son in a rank inferior to that which he himself had held among the princes of Europe. As he had, some years before, made a fruitless attempt to secure the imperial crown to Philip, that, by uniting it to the kingdoms of Spain, and the dominions of the

Charles's new attempt to alter the succession of the empire;

house of Burgundy, he might put it in his power to prosecute, with a better prospect of success, those great plans which his own infirmities had obliged him to abandon, he was still unwilling to relinquish this flattering project as chimerical or unattainable. 1556.

Notwithstanding the repulse which he had formerly met with from his brother Ferdinand, he renewed his solicitations with fresh importunity; and, during the summer, had tried every art, and employed every argument, which he thought could induce him to quit the imperial throne to Philip, and to accept of the investiture of some province, either in Italy, or in the Low Countries, as an equivalent [a]. But Ferdinand, who was so firm and inflexible with regard to this point, that he had paid no regard to the solicitations of the emperor, even when they were enforced with all the weight of authority, which accompanies supreme power, received the overture, that now came from him in the situation to which he had descended, with great indifference, and would hardly deign to listen to it. Charles, ashamed of his own credulity in having imagined that he might accomplish that now, which he had attempted formerly without success, desisted finally from his scheme. He then resigned the government of the empire; and having transferred all his claims of obedience and allegiance from the Germanic body, to his brother the king of the Romans, he executed a deed to that effect, with all the formalities requisite in such an important transaction. The instrument of resignation he committed to William, prince of Orange, and empowered him to lay it before the college of electors [b]. which proves unsuccessful. August 27.

Nothing now remained to detain Charles from that retreat for which he languished. The preparations for his voyage having been made for some time, he set Charles sets out for Spain.

[a] Ambassades de Noailles, tom. v. 356.

[b] Goldast. Constit. Imper. pars. i. p. 576.

1556. out for Zuitburg, in Zealand, where the fleet, which was to convoy him, had orders to assemble. In his way thither he passed through Ghent; and after stopping there a few days, to indulge that tender and pleasing melancholy, which arises in the mind of every man in the decline of life, on visiting the place of his nativity, and viewing the scenes and objects familiar to him in his early youth, he pursued his journey, accompanied by his son Philip, his daughter the archdutchess, his sisters the dowager queens of France and Hungary, Maximilian his son-in-law, and a numerous retinue of the Flemish nobility. Before he went on board, he dismissed them with marks of his attention or regard; and taking leave of Philip with all the tenderness of a father who embraced his son for the last time, he set sail on the seventeenth of September, under the convoy of a large fleet of Spanish, Flemish, and English ships. He declined a pressing invitation, from the queen of England, to land in some part of her dominions, in order to refresh himself, and that she might have the comfort of seeing him once more. "It cannot, surely," said he, "be agreeable to a queen to receive a visit from a father-in-law, who is now nothing more than a private gentleman."

His arrival and reception there.

His voyage was prosperous, and he arrived at Laredo, in Biscay, on the eleventh day after he left Zealand. As soon as he landed he fell prostrate on the ground; and considering himself now as dead to the world, he kissed the earth, and said, "Naked came I out of my mother's womb, and naked I now return to thee, thou common mother of mankind." From Laredo, he pursued his journey to Burgos, carried sometimes in a chair, and sometimes in a horse-litter, suffering exquisite pain at every step, and advancing with the greatest difficulty. Some of the Spanish nobility repaired to Burgos, in order to pay court to him; but they were so few in number, and their attendance was so negligent, that Charles

observed it, and felt, for the first time, that he was no longer a monarch. Accustomed from his early youth to the dutiful and officious respect with which those who possess sovereign power are attended, he had received it with the credulity common to princes, and was sensibly mortified, when he now discovered, that he had been indebted to his rank and power for much of that obsequious regard which he had fondly thought was paid to his personal qualities. But though he might have soon learned to view with unconcern the levity of his subjects, or to have despised their neglect, he was more deeply afflicted with the ingratitude of his son, who, forgetting already how much he owed to his father's bounty, obliged him to remain some weeks at Burgos, before he paid him the first moiety of that small pension, which was all that he had reserved of so many kingdoms. As without this sum, Charles could not dismiss his domestics with such rewards as their services merited, or his generosity had destined for them, he could not help expressing both surprise and dissatisfaction[c]. At last the money was paid; and Charles having dismissed a great number of his domestics, whose attendance he thought would be superfluous or cumbersome in his retirement, he proceeded to Valladolid. There he took a last and tender leave of his two sisters, whom he would not permit to accompany him to his solitude, though they requested him with tears, not only that they might have the consolation of contributing by their attendance and care to mitigate or to sooth his sufferings, but that they might reap instruction and benefit by joining with him in those pious exercises, to which he had consecrated the remainder of his days. 1556.

From Valladolid he continued his journey to Pla-

[c] Strada de Bello Belg. lib. i. 9.

1557. centia, in Estremadura. He had passed through this place a great many years before; and having been struck at that time with the delightful situation of the monastery of St. Justus, belonging to the order of St. Jerome, not many miles distant from the town, he had then observed to some of his attendants, that this was a spot to which Diocletian might have retired with pleasure. The impression had remained so strong on his mind, that he pitched upon it as the place of his own retreat. It was seated in a vale of no great extent, watered by a small brook, and surrounded by rising grounds covered with lofty trees; from the nature of the soil, as well as the temperature of the climate, it was esteemed the most healthful and delicious situation in Spain. Some months before his resignation he had sent an architect thither, to add a new apartment to the monastery for his accommodation; but he gave strict orders that the style of the building should be such as suited his present station, rather than his former dignity. It consisted only of six rooms, four of them in the form of friars' cells, with naked walls; the other two, each twenty feet square, were hung with brown cloth, and furnished in the most simple manner. They were all on a level with the ground; with a door on one side into a garden, of which Charles himself had given the plan, and had filled it with various plants, which he intended to cultivate with his own hands. On the other side they communicated with the chapel of the monastery, in which he was to perform his devotions. Into this humble retreat, hardly sufficient for the comfortable accommodation of a private gentleman, did Charles enter, with twelve domestics only. He buried there, in solitude and silence, his grandeur, his ambition, together with all those vast projects, which, during almost half a century, had alarmed and agitated Europe, filling every kingdom in it, by turns, with the

The place of his retreat.

Feb. 24.

terrour of his arms, and the dread of being subdued by his power[d]. 1557.

Contrast between the behaviour of Charles and the pope.

The contrast between Charles's conduct and that of the pope at this juncture, was so obvious, that it struck even the most careless observers, nor was the comparison which they made to the advantage of Paul. The former, a conqueror, born to reign, long accustomed to the splendour which accompanies supreme power, and to those busy and interesting scenes in which an active ambition had engaged him, quitted the world, at a period of life not far advanced, that he might close the evening of his days in tranquillity, and secure some interval for sober thought and serious recollection. The latter, a priest, who had passed the early part of his life in the shade of the schools, and in the study of the speculative sciences, who was seemingly so detached from the world, that he had shut himself up for many years in the solitude of a cloister, and who was not raised to the papal throne until he had reached the extremity of old age, discovered at once all the impetuosity of youthful ambition, and formed extensive schemes, in order to accomplish which, he scrupled not to scatter the seeds of discord, and to kindle the flames of war, in every corner of Europe. But Paul, regardless of the opinion or censures of mankind, held on his own course with his wonted arrogance and violence. These, although they seemed already to have exceeded all bounds, rose to a still greater height, upon the arrival of the duke of Guise in Italy.

The duke of Guise leads the French army into Italy.

That which the two princes of Lorrain foresaw and desired, had happened. The duke of Guise was intrusted with the command of the army appointed to march to the pope's assistance. It consisted of twenty thousand men of the best troops in the service of France. So high was the duke's reputation, and such

[d] Sandov. ii. p. 607, and Zuniga, p. 100. Thuan. lib. xvii. 609.

1557. the general expectation of beholding some extraordinary exertion of his courage and abilities in a war, into which he had precipitated his country, chiefly with the design of obtaining a field where he might display his own talents, that many of the French nobility, who had no command in the troops employed, accompanied him as volunteers. This army passed the Alps in an inclement season, and advanced towards Rome, without any opposition from the Spaniards, who, as they were not strong enough to act in different parts, had collected all their forces in one body on the frontiers of Naples, for the defence of that kingdom.

The pope renews hostilities against Philip.

Emboldened by the approach of the French, the pope let loose all the fury of his resentment against Philip, which, notwithstanding the natural violence of his temper, prudential considerations had hitherto obliged him to keep under some restraint. He named commissioners, whom he empowered to pass judgment in the suit, which the consistorial advocate had commenced against Philip, in order to prove that he had

Feb. 12. forfeited the crown of Naples, by taking arms against the holy see, of which he was a vassal. He recalled all the nuncios resident in the courts of Charles the

April 9. fifth, of Philip, or of any of their allies. This was levelled chiefly against cardinal Pole, the papal legate in the court of England, whose great merit, in having contributed so successfully to reconcile that kingdom to the church of Rome, together with the expectation of farther services which he might perform, was not sufficient to screen him from the resentment that he had incurred by his zealous endeavours to establish peace between the house of Austria and France. He commanded an addition to be made to the anathemas annually denounced against the enemies of the church on Maundy-Thursday, whereby he inflicted the censure of excommunication on the authors of the late invasion of the ecclesiastical territories, whatever their rank or dignity might be; and, in consequence of this,

the usual prayers for the emperor were omitted next day in the pope's chapel[e]. 1557.

His military preparations inadequate.

But while the pope indulged himself in these wild and childish sallies of rage, either he neglected, or found that it exceeded his power, to take such measures as would have rendered his resentment really formidable, and fatal to his enemies. For when the duke of Guise entered Rome, where he was received with a triumphal pomp, which would have been more suitable if he had been returning after having terminated the war with glory, than when he was going to begin it with a doubtful chance of success, he found none of the preparations for war in such forwardness as cardinal Caraffa had promised, or he had expected. The papal troops were far inferior in number to the quota stipulated; no magazines sufficient for their subsistance were formed; nor was money for paying them provided. The Venetians, agreeably to that cautious maxim which the misfortunes of their state had first led them to adopt, and which was now become a fundamental principle in their policy, declared their resolution to preserve an exact neutrality, without taking any part in the quarrels of princes, so far superior to themselves in power. The other Italian states were either openly united in league with Philip, or secretly wished success to his arms against a pontiff, whose inconsiderate ambition had rendered Italy once more the seat of war.

Duke of Guise's operations.

The duke of Guise perceived that the whole weight of the war would devolve on the French troops under his command; and became sensible, though too late, how imprudent it is to rely, in the execution of great enterprises, on the aid of feeble allies. Pushed on, however, by the pope's impatience for action, as well as by his own desire of performing some part of what he had so confidently undertaken, he marched towards April 13.

[e] Pallav. lib. xiii. 180. Mém. de Ribier, ii. p. 678.

1557. Naples, and began his operations. But the success of these fell far short of his former reputation, of what the world expected, and of what he himself had promised. He opened the campaign with the siege of Civitella, a town of some importance on the Neapolitan frontier. But the obstinacy with which the Spanish governor defended it, baffled all the impetuous efforts of the French valour, and obliged the duke of Guise, after a siege of three weeks, to retire from the town with disgrace. He endeavoured to wipe off that stain, by advancing boldly towards the duke of Alva's camp, and offering him battle. But that prudent commander, sensible of all the advantages of standing on the defensive before an invading enemy, declined an engagement, and kept within his entrenchment; and, adhering to his plan with the steadiness of a Castilian, eluded, with great address, all the duke of Guise's stratagems, to draw him into action[f]. By this time, sickness began to waste the French army: violent dissensions had arisen between the duke of Guise and the commander of the pope's forces; the Spaniards renewed their incursions into the ecclesiastical state; the pope, when he found, instead of the conquests and triumphs which he had fondly expected, that he could not secure his own territories from depredation, murmured, complained, and began to talk of peace. The duke of Guise, mortified, to the last degree, with having acted such an inglorious part, not only solicited his court either to reinforce his army, or to recall him, but urged Paul to fulfil his engagements; and called on cardinal Caraffa, sometimes with reproaches, sometimes with threats, to make good those magnificent promises, from a rash confidence in which he had advised his master to renounce the truce of Vaucelles, and to join in league with the pope[g].

[f] Herrera, Vida de Filipo, p. 181.

[g] Thuan. lib. xxviii. 614. Pallav. lib. xiii. 181. Burn. ii. App. p. 317.

1557.

But while the French affairs in Italy were in this wretched situation, an unexpected event happened in the Low Countries, which called the duke of Guise from a station wherein he could acquire no honour, to the most dignified and important charge which could be committed to a subject. As soon as the French had discovered their purpose of violating the truce of Vaucelles, not only by sending an army into Italy, but by attempting to surprise some of the frontier towns in Flanders, Philip, though willing to have avoided a rupture, determined to prosecute the war with such spirit, as should make his enemies sensible, that his father had not erred, when he judged him to be so capable of government, that he had given up the reins into his hands. As he knew that Henry had been at great expense in fitting out the army under the duke of Guise, and that his treasury was hardly able to answer the exorbitant and endless demands of a distant war, he foresaw that all his operations in the Low Countries must, of consequence, prove feeble, and be considered only as secondary to those in Italy. For that reason, he prudently resolved to make his principal effort in that place where he expected the French to be weakest, and to bend his chief force against that quarter where they would feel a blow most sensibly. With this view, he assembled in the Low Countries an army of about fifty thousand men, the Flemings serving him, on this occasion, with that active zeal, which subjects are wont to exert in obeying the first commands of a new sovereign. But Philip, cautious and provident, even at that early period of life, did not rest all his hopes of success on that formidable force alone.

Hostilities in the Low Countries.

He had been labouring for some time to engage the English to espouse his quarrel; and though it was manifestly the interest of that kingdom to maintain a strict neutrality, and the people themselves were sensible of the advantages which they derived from it; though he knew how odious his name was to the

Philip endeavours to engage England in the war.

1557. English, and how averse they would be to cooperate with him in any measure; he, nevertheless, did not despair of accomplishing his point. He relied on the affection with which the queen doted on him, which was so violent, that even his coldness and neglect had not extinguished it; he knew her implicit reverence for his opinion, and her fond desire of gratifying him in every particular. That he might work on these with greater facility and more certain success, he set out for England. The queen, who, during her husband's absence had languished in perpetual dejection, resumed fresh spirits on his arrival; and, without paying the least attention either to the interest or to the inclinations of her people, entered warmly into all his schemes. In vain did her privy council remonstrate against the imprudence as well as danger of involving the nation in an unnecessary war; in vain did they put her in mind of the solemn treaties of peace subsisting between England and France, which the conduct of that nation had afforded her no pretext to violate. Mary, soothed by Philip's caresses, or intimidated by the threats which his ascendant over her emboldened him at some times to throw out, was deaf to every thing that could be urged in opposition to his sentiments, and insisted with the greatest vehemence on an immediate declaration of war against France. The council, though all Philip's address and Mary's authority were employed to gain or overawe them, after struggling long, yielded at last, not from conviction, but merely from deference to the will of their sove-

June 20. reign. War was declared against France, the only one, perhaps, against that kingdom into which the English ever entered with reluctance. As Mary knew the aversion of the nation to this measure, she durst not call a parliament, in order to raise money for carrying on the war. She supplied this want, however, by a stretch of royal prerogative, not unusual in that age, and levied large sums on her subjects by her own

authority. This enabled her to assemble a sufficient body of troops, and to send eight thousand men under the conduct of the earl of Pembroke to join Philip's army [h]. 1557.

Operations of Philip's army in the Low Countries.

Philip, who was not ambitious of military glory, gave the command of his army to Emanuel Philibert, duke of Savoy, and fixed his own residence at Cambray, that he might be at hand to receive the earliest intelligence of his motions, and to aid him with his counsels. The duke opened the campaign with a masterly stroke of address, which justified Philip's choice, and discovered such a superiority of genius over the French generals, as almost insured success in his subsequent operations. He appointed the general rendezvous of his troops at a place considerably distant from the country which he destined to be the scene of action; and having kept the enemy in suspense for a good time with regard to his intentions, he at last deceived them so effectually by the variety of his marches and countermarches, as led them to conclude that he meant to bend all his force against the province of Champagne, and would attempt to penetrate into the kingdom on that side. In consequence of this opinion, they drew all their strength towards that quarter, and, reinforcing the garrison there, left the towns on other parts of the frontier destitute of troops sufficient to defend them.

Invests St. Quentin.

The duke of Savoy, as soon as he perceived that this feint had its full effect, turned suddenly to the right, advanced by rapid marches into Picardy, and sending his cavalry, in which he was extremely strong, before him, invested St. Quentin. This was a town deemed, in that age, of considerable strength, and of great importance, as there were few fortified cities between it and Paris. The fortifications, however, had been much neglected; the garrison, weakened by draughts sent towards Champagne, did not amount to a fifth

[h] Carte, iii. p. 337.

1557. part of the number requisite for its defence; and the governor, though a brave officer, was neither of rank, nor authority, equal to the command in a place of so much consequence, besieged by such a formidable army. A few days must have put the duke of Savoy in possession of the town, if the admiral de Coligny, who thought it concerned his honour to attempt saving a place of such importance to his country, and which lay within his jurisdiction as governor of Picardy, had not taken the gallant resolution of throwing himself into it, with such a body of men as he could collect on a sudden. This resolution he executed with great intrepidity, and, if the nature of the enterprise be considered, with no contemptible success; for, though one half of his small body of troops was cut off, he with the other broke through the enemy, and entered the town. The unexpected arrival of an officer of such high rank and reputation, and who had exposed himself to such danger in order to join them, inspired the desponding garrison with courage. Every thing that the admiral's great skill and experience in the art of war could suggest, for annoying the enemy, or defending the town, was attempted; and the citizens, as well as the garrison, seconding his zeal with equal ardour, seemed to be determined that they would hold out to the last, and sacrifice themselves in order to save their country[i].

The French endeavour to relieve the town.

The duke of Savoy, whom the English, under the earl of Pembroke, joined about this time, pushed on the siege with the greatest vigour. An army so numerous, and so well supplied with every thing requisite, carried on its approaches with great advantage against a garrison which was still so feeble that it durst seldom venture to disturb or retard the enemy's operations by sallies. The admiral, sensible of the approaching danger, and unable to avert it, acquainted his uncle,

[i] Thuan. lib. xix. 647.

the constable Montmorency, who had the command of the French army, with his situation, and pointed out to him a method by which he might throw relief into the town. The constable, solicitous to save a town, the loss of which would open a passage for the enemy into the heart of France, and eager to extricate his nephew out of that perilous situation, in which zeal for the public had engaged him, resolved, though aware of the danger, to attempt what he desired. With this view, he marched from La Fère towards St. Quentin at the head of his army, which was not by one half so numerous as that of the enemy; and having given the command of a body of chosen men to Coligny's brother, Dandelot, who was colonel general of the French infantry, he ordered him to force his way into the town by that avenue which the admiral had represented as most practicable, while he himself with the main army would give the alarm to the enemy's camp on the opposite side, and endeavour to draw all their attention towards that quarter. Dandelot executed his orders with greater intrepidity than conduct. He rushed on with such headlong impetuosity, that, though it broke the first body of the enemy which stood in his way, it threw his own soldiers into the utmost confusion; and as they were attacked in that situation by fresh troops which closed in upon them on every side, the greater part of them were cut in pieces; Dandelot, with about five hundred of the most adventurous and most fortunate, making good his entrance into the town. 1557. Aug. 10.

Meanwhile the constable, in executing his part of the plan, advanced so near the camp of the besiegers, as rendered it impossible to retreat with safety in the face of an enemy so much superior in number. The duke of Savoy instantly perceived Montmorency's errour, and prepared, with the presence of mind and abilities of a great general, to avail himself of it. He drew up his army in order of battle with the greatest expedition; and, watching the moment when the The battle of St. Quentin.

1557. French began to file off towards La Fère, he detached all his cavalry, under the command of the count of Egmont, to fall on their rear, while he himself, at the head of his infantry, advanced to support him. The French retired at first in perfect order, and with a good countenance; but when they saw Egmont draw near with his formidable body of cavalry, the shock of which they were conscious that they could not withstand, the prospect of imminent danger, added to distrust of their general, whose imprudence every soldier now perceived, struck them with general consternation. They began insensibly to quicken their pace, and those in the rear pressed so violently on such as were before them, that, in a short time, their march resembled a flight rather than a retreat. Egmont, observing their confusion, charged them with the greatest fury; and in a moment all their men at arms, the pride and strength of the French troops in that age, gave way, and fled with precipitation. The infantry, however, whom the constable, by his presence and authority, kept to their colours, still continued to retreat in good order, until the enemy brought some pieces of cannon to bear upon their centre, which threw them into such confusion, that the Flemish cavalry, renewing their attack, broke in, and the rout became universal. About four thousand of the French fell in the field, and among these the duke of Enghien, a prince of the blood, together with six hundred gentlemen. The constable, as soon as he perceived the fortune of the day to be irretrievable, rushed into the thickest of the enemy, with a resolution not to survive the calamity, which his ill-conduct had brought upon his country; but having received a dangerous wound, and being wasted with the loss of blood, he was surrounded by some Flemish officers, to whom he was known, who protected him from the violence of the soldiers, and obliged him to surrender. Besides the constable, the dukes of Montpensier and Longueville, the maréchal

Total defeat of the French.

St. André, many officers of distinction, three hundred gentlemen, and near four thousand private soldiers, were taken prisoners. All the colours belonging to the infantry, all the ammunition, and all the cannon, two pieces excepted, fell into the enemy's hands. The victorious army did not lose above fourscore men[k]. 1557.

This battle, no less fatal to France than the ancient victories of Crecy and Agincourt, gained by the English on the same frontier, bore a near resemblance to those disastrous events, in the suddenness of the rout; in the ill conduct of the commander in chief; in the number of persons of note slain or taken; and in the small loss sustained by the enemy. It filled France with equal consternation. Many inhabitants of Paris, with the same precipitancy and trepidation, as if the enemy had been already at their gates, quitted the city, and retired into the interior provinces. The king, by his presence and exhortations, endeavoured to console and to animate such as remained, and, applying himself with the greatest diligence to repair the ruinous fortifications of the city, prepared to defend it against the attack which he instantly expected. But happily for France, Philip's caution, together with the intrepid firmness of the admiral de Coligny, not only saved the capital from the danger to which it was exposed, but gained the nation a short interval, during which the people recovered from the terrour and dejection occasioned by a blow no less severe than unexpected, and Henry had leisure to take measures for the public security, with the spirit which became the sovereign of a powerful and martial people. The first effects of it.

Philip, immediately after the battle, visited the camp at St. Quentin, where he was received with all the exultation of military triumph; and such were his transports of joy, on account of an event which threw so much lustre on the beginning of his reign, that Philip repairs to his army.

[k] Thuan. p. 650. Haræi Annal. Brabant. ii. p. 692. Herrera, p. 291.

1557. they softened his severe and haughty temper into an unusual flow of courtesy. When the duke of Savoy approached, and was kneeling to kiss his hands, he caught him in his arms, and embracing him with warmth, "It becomes me," says he, "rather to kiss your hands, which have gained me such a glorious and almost bloodless victory."

His deliberations concerning the prosecution of the war.

As soon as the rejoicings and congratulations on Philip's arrival were over, a council of war was held, in order to determine how they might improve their victory to the best advantage. The duke of Savoy, seconded by several of the ablest officers, formed under Charles the fifth, insisted that they should immediately relinquish the siege of St. Quentin, the reduction of which was now an object below their attention, and advance directly towards Paris; that as there were neither troops to oppose, nor any town of strength to retard their march, they might reach that capital while under the full impression of the astonishment and terrour occasioned by the rout of the army, and take possession of it without resistance. But Philip, less adventurous or more prudent than his generals, preferred a moderate but certain advantage, to an enterprise of greater splendour, but of more doubtful success. He represented to the council the infinite resources of a kingdom so powerful as France; the great number as well as martial spirit of its nobles; their attachment to their sovereign; the manifold advantages with which they could carry on war in their own territories; and the unavoidable destruction which must be the consequence of their penetrating too rashly into the enemy's country, before they had secured such a communication with their own, as might render a retreat safe, if, upon any disastrous event, that measure should become necessary. On all these accounts, he advised the continuance of the siege; and his generals acquiesced the more readily in his opinion, as they made no doubt of being masters of the town in

a few days, a loss of time of so little consequence in the execution of their plan, that they might easily repair it by their subsequent activity[1]. 1557.

The weakness of the fortifications, and the small number of the garrison, which could no longer hope either for reinforcement or relief, seemed to authorize this calculation of Philip's generals. But, in making it, they did not attend sufficiently to the character of admiral de Coligny, who commanded in the town. A courage undismayed and tranquil amidst the greatest dangers, an invention fruitful in resources, a genius which roused and seemed to acquire new force upon every disaster, a talent of governing the minds of men, together with a capacity of maintaining his ascendant over them even under circumstances the most adverse and distressful, were qualities which Coligny possessed in a degree superior to any general of that age. These qualities were peculiarly adapted to the station in which he was now placed; and as he knew the infinite importance to his country of every hour which he could gain at this juncture, he exerted himself to the utmost in contriving how to protract the siege, and to detain the enemy from attempting any enterprise more dangerous to France. Such were the perseverance and skill with which he conducted the defence, and such the fortitude as well as patience with which he animated the garrison, that though the Spaniards, the Flemings, and the English, carried on the attack with all the ardour which national emulation inspires, he held out the town seventeen days. He was taken prisoner, at last, on the breach, overpowered by the superior number of the enemy. St. Quentin defended by admiral de Coligny; which is taken by assault. Aug. 27.

Henry availed himself, with the utmost activity, of the interval which the admiral's well-timed obstinacy had afforded him. He appointed officers to collect the scattered remains of the constable's army; he is- Henry's measures for the defence of his kingdom.

[1] Belcar. Commentar. de Reb. Gallic. p. 901.

1557. sued orders for levying soldiers in every part of the kingdom; he commanded the ban and arrière ban of the frontier provinces instantly to take the field, and to join the duke of Nevers at Laon in Picardy; he recalled the greater part of the veteran troops which served under the maréchal Brissac in Piedmont; he sent courier after courier to the duke of Guise, requiring him, together with all his army, to return instantly for the defence of their country; he despatched one envoy to the grand seignior, to solicit the assistance of his fleet, and the loan of a sum of money; he sent another into Scotland, to incite the Scots to invade the north of England, that, by drawing Mary's attention to that quarter, he might prevent her from reinforcing her troops which served under Philip. These efforts of the king were warmly seconded by the zeal of his subjects. The city of Paris granted him a free gift of three hundred thousand livres. The other great towns imitated the liberality of the capital, and contributed in proportion. Several noblemen of distinction engaged, at their own expense, to garrison and defend the towns which lay most exposed to the enemy. Nor was the general concern for the public confined to corporate bodies alone, or to those in the higher sphere of life; but, diffusing itself among persons of every rank, each individual seemed disposed to act with as much vigour as if the honour of the king, and the safety of the state, had depended solely on his single efforts[m].

The victory of St. Quentin productive of few beneficial consequences.

Philip, who was no stranger either to the prudent measures taken by the French monarch for the security of his dominions, or to the spirit with which his subjects prepared to defend themselves, perceived, when it was too late, that he had lost an opportunity which could never be recalled, and that it was now vain to think of penetrating into the heart of France.

[m] Mém. de Ribier, ii. p. 701. 703.

He abandoned, therefore, without much reluctance, a scheme which was too bold and hazardous to be perfectly agreeable to his cautious temper; and employed his army, during the remainder of the campaign, in the sieges of Ham and Catelet. Of these he soon became master; and the reduction of two such petty towns, together with the acquisition of St. Quentin, were all the advantages which he derived from one of the most decisive victories gained in that century. Philip himself, however, continued in high exultation on account of his success; and as all his passions were tinged with superstition, he, in memory of the battle of St. Quentin, which had been fought on the day consecrated to St. Lawrence, vowed to build a church, a monastery, and a palace, in honour of that saint and martyr. Before the expiration of the year, he laid the foundation of an edifice, in which all these were united, at the Escurial, in the neighbourhood of Madrid; and the same principle which dictated the vow, directed the building. For the plan of the work was so formed as to resemble a gridiron, which, according to the legendary tale, had been the instrument of St. Lawrence's martyrdom. Notwithstanding the great and expensive schemes, in which his restless ambition involved him, Philip continued the building with such perseverance for twenty-two years, and reserved such large sums for this monument of his devotion and vanity, that the monarchs of Spain are indebted to him for a royal residence, which, though not the most elegant, is certainly the most sumptuous and magnificent of any in Europe[n].

1557.

The French army recalled out of Italy.

The first account of that fatal blow which the French had received at St. Quentin was carried to Rome by the courier, whom Henry had sent to recall the duke of Guise. As Paul, even with the assistance of his French auxiliaries, had hardly been able to check the progress of the Spanish arms, he foresaw that, as soon

[n] Colménar, Annales d'Espagne, tom. ii. 136.

1557. as he was deprived of their protection, his territories must be overrun in a moment. He remonstrated, therefore, with the greatest violence against the departure of the French army, reproaching the duke of Guise for his ill conduct, which had brought him into such an unhappy situation; and complaining of the king for deserting him so ungenerously under such circumstances. The duke of Guise's orders, however, were peremptory. Paul, inflexible as he was, found it necessary to accommodate his conduct to the exigency of his affairs, and to employ the mediation of the Venetians, and of Cosmo de' Medici, in order to obtain peace. Philip, who had been forced unwillingly to a rupture with the pope, and who, even while success crowned his arms, doubted so much the justice of his own cause, that he had made frequent overtures of pacification, listened eagerly to the first proposals of this nature from Paul, and discovered such moderation in his demands, as could hardly have been expected from a prince elated with victory.

A treaty of peace between the pope and Philip.

The duke of Alva on the part of Philip, and the cardinal Caraffa in the name of his uncle, met at Cavi; and both being equally disposed to peace, they, after a short conference, terminated the war by a treaty on the following terms: That Paul should renounce his league with France, and maintain, for the future, such a neutrality as became the common father of christendom; that Philip should instantly restore all the towns of the ecclesiastical territory of which he had taken possession; that the claims of the Caraffas to the dutchy of Paliano, and other demesnes of the Colonnas, should be referred to the decision of the republic of Venice; that the duke of Alva should repair in person to Rome, and after asking pardon of Paul in his own name, and in that of his master, for having invaded the patrimony of the church, should receive the pope's absolution from that crime. Thus Paul, through Philip's scrupulous timidity, finished an un-

prosperous war without any detriment to the papal see. The conqueror appeared humble, and acknowledged his errour; while he who had been vanquished retained his usual haughtiness, and was treated with every mark of superiority[o]. The duke of Alva, in terms of the treaty, repaired to Rome, and, in the posture of a supplicant, kissed the feet, and implored the forgiveness, of that very person, whom his arms had reduced to the last extremity. Such was the superstitious veneration of the Spaniards for the papal character, that Alva, though, perhaps, the proudest man of the age, and accustomed from his infancy to a familiar intercourse with princes, acknowledged that, when he approached the pope, he was so much overawed that his voice failed, and his presence of mind forsook him[p]. 1557.

Philip restores Placentia to Octavio Farnese.

But though this war, which, at its commencement, threatened mighty revolutions, was brought to an end without occasioning any alteration in those states, which were its immediate object, it had produced, during its progress, effects of considerable consequence in other parts of Italy. As Philip was extremely solicitous to terminate his quarrel with Paul as speedily as possible, he was willing to make any sacrifice in order to gain those princes who, by joining their troops to the papal and French army, might have prolonged the war. With this view, he entered into a negotiation with Octavio Farnese, duke of Parma; and, in order to seduce him from his alliance with France, he restored to him the city of Placentia, with the territory depending on it, which Charles the fifth had seized in the year one thousand five hundred and forty-seven, had kept from that time in his possession, and had transmitted, together with his other dominions, to Philip.

[o] Pallav. lib. xiii. 183. F. Paul, p. 380. Herrera, vol. i. 310.
[p] Pallav. lib. xiii. 185. Summonte, Istoria di Napoli, iv. p. 286.

1557. This step made such a discovery of Philip's character and views to Cosmo de' Medici, the most sagacious as well as provident of all the Italian princes, that he conceived hopes of accomplishing his favourite scheme of adding Siena and its territories to his dominions in Tuscany. As his success in this attempt depended entirely on the delicacy of address with which it should be conducted, he employed all the refinements of policy in the negotiation which he set on foot for this purpose. He began with soliciting Philip, whose treasury he knew to be entirely drained by the expense of the war, to repay the great sums which he had advanced to the emperor during the siege of Siena. When Philip endeavoured to elude a demand which he was unable to satisfy, Cosmo affected to be extremely disquieted, and, making no secret of his disgust, instructed his ambassador at Rome to open a negotiation with the pope, which seemed to be the effect of it. The ambassador executed his commission with such dexterity, that Paul, imagining Cosmo to be entirely alienated from the Spanish interest, proposed to him an alliance with France, which should be cemented by the marriage of his eldest son to one of Henry's daughters. Cosmo received the overture with such apparent satisfaction, and with so many professions of gratitude for the high honour of which he had the prospect, that not only the pope's ministers, but the French envoy at Rome, talked confidently, and with little reserve, of the accession of that important ally, as a matter certain and decided. The account of this was quickly carried to Philip; and Cosmo, who foresaw how much it would alarm him, had despatched his nephew Ludovico di Toledo into the Netherlands, that he might be at hand to observe and take advantage of his consternation, before the first impression which it made should in any degree abate. Cosmo was extremely fortunate in the choice of the instrument whom he employed. Toledo waited with pa-

Cosmo de' Medici's measures for obtaining Siena.

tience, until he discovered with certainty, that Philip had received such intelligence of his uncle's negotiations at Rome, as must have filled his suspicious mind with fear and jealousy; and then craving an audience, he required payment of the money which had been borrowed by the emperor, in the most earnest and peremptory terms. In urging that point, he artfully threw out several dark hints and ambiguous declarations, concerning the extremities to which Cosmo might be driven by a refusal of this just demand, as well as by other grievances of which he had good reason to complain. 1557.

Philip, astonished at an address, in such a strain, from a prince so far his inferior as the duke of Tuscany, and comparing what he now heard with the information which he had received from Italy, immediately concluded that Cosmo had ventured to assume this bold and unusual tone on the prospect of his union with France. In order to prevent the pope and Henry from acquiring an ally, who, by his abilities, as well as the situation of his dominions, would have added both reputation and strength to their confederacy, he offered to grant Cosmo the investiture of Siena, if he would consent to accept of it, as an equivalent for the sums due to him, and engage to furnish a body of troops towards the defence of Philip's territories in Italy against any power who should attack them. As soon as Cosmo had brought Philip to make this concession, which was the object of all his artifices and intrigues, he did not protract the negotiation by any unnecessary delay, or any excess of refinement, but closed eagerly with the proposal; and Philip, in spite of the remonstrances of his ablest counsellors, signed a treaty with him to that effect[q]. Their success.

As no prince was ever more tenacious of his rights than Philip, or less willing to relinquish any territory

[q] Thuan. lib. xviii. 624. Herrera, i. p. 263. 275. Pallav. lib. xiii. 180.

1557. which he possessed, by what tenure soever he held it, these unusual concessions to the dukes of Parma and Tuscany, by which he wantonly gave up countries, in acquiring or defending which his father had employed many years and wasted much blood and treasure, cannot be accounted for from any motive but his superstitious desire of extricating himself out of the war which he had been forced to wage against the pope. By these treaties, however, the balance of power among the Italian states was poised with greater equality, and rendered less variable than it had been since it received the first violent shock from the invasion of Charles the eighth of France. From this period Italy ceased to be the great theatre, on which the monarchs of Spain, France, and Germany, contended for power or for fame. Their dissensions and hostilities, though as frequent and violent as ever, being excited by new objects, stained other regions of Europe with blood, and rendered them miserable, in their turn, by the devastations of war.

Sept. 29. The duke of Guise's reception in France.

The duke of Guise left Rome on the same day that his adversary, the duke of Alva, made his humiliating submission to the pope. He was received in France as the guardian angel of the kingdom. His late ill success in Italy seemed to be forgotten, while his former services, particularly his defence of Metz, were recounted with exaggerated praise; and he was welcomed in every city through which he passed, as the restorer of public security, who, after having set bounds by his conduct and valour to the victorious arms of Charles the fifth, returned now, at the call of his country, to check the formidable progress of Philip's power. The reception which he met with from Henry was no less cordial and honourable. New titles were invented, and new dignities created, in order to distinguish him. He was appointed lieutenant general in chief both within and without the kingdom, with a jurisdiction almost unlimited, and

hardly inferior to that which was possessed by the king himself. Thus, through the singular felicity which attended the princes of Lorrain, the miscarriage of their own schemes contributed to aggrandize them. The calamities of his country, and the ill conduct of his rival, the constable, exalted the duke of Guise to a height of dignity and power, which he could not have expected to attain by the most fortunate and most complete success of his own ambitious projects. 1557.

Takes the command of the army.

The duke of Guise, eager to perform something suitable to the high expectations of his countrymen, and that he might justify the extraordinary confidence which the king had reposed in him, ordered all the troops which could be got together, to assemble at Compiegne. Though the winter was well advanced, and had set in with extreme severity, he placed himself at their head, and took the field. By Henry's activity and the zeal of his subjects, so many soldiers had been raised in the kingdom, and such considerable reinforcements had been drawn from Germany and Switzerland, as formed an army respectable even in the eyes of a victorious enemy. Philip, alarmed at seeing it put in motion at such an uncommon season, began to tremble for his new conquests, particularly St. Quentin, the fortifications of which were hitherto but imperfectly repaired.

He invests Calais; 1558. Jan. 1st.

But the duke of Guise meditated a more important enterprise; and after amusing the enemy with threatening successively different towns on the frontiers of Flanders, he turned suddenly to the left, and invested Calais with his whole army. Calais had been taken by the English under Edward the third, and was the fruit of that monarch's glorious victory at Crecy. Being the only place that they retained of their ancient and extensive territories in France, and which opened to them, at all times, an easy and secure passage into the heart of that kingdom, their keeping possession of it soothed the pride of the one nation, as

1558. much as it mortified the vanity of the other. Its situation was naturally so strong, and its fortifications deemed so impregnable, that no monarch of France, how adventurous soever, had been bold enough to attack it. Even when the domestic strength of England was broken and exhausted by the bloody wars between the houses of York and Lancaster, and its attention entirely diverted from foreign objects, Calais had remained undisturbed and unthreatened. Mary and her council, composed chiefly of ecclesiastics, unacquainted with military affairs, and whose whole attention was turned towards extirpating heresy out of the kingdom, had not only neglected to take any precautions for the safety of this important place, but seemed to think that the reputation of its strength was alone sufficient for its security. Full of this opinion, they ventured, even after the declaration of war, to continue a practice which the low state of the queen's finances had introduced in times of peace. As the country adjacent to Calais was overflowed during the winter, and the marshes around it became impassable, except by one avenue, which the forts of St. Agatha and Newnhambridge commanded, it had been the custom of the English to dismiss the greater part of the garrison towards the end of autumn, and to replace it in the spring. In vain did lord Wentworth, the governor of Calais, remonstrate against this ill-timed parsimony, and represent the possibility of his being attacked suddenly while he had not troops sufficient to man the works. The privy council treated these remonstrances with scorn, as if they had flowed from the timidity or the rapaciousness of the governor; and some of them, with that confidence which is the companion of ignorance, boasted that they would defend Calais with their white rods against any enemy who should approach it during winter[r]. In vain did Philip, who had passed through Calais as he returned

its defenceless state.

[r] Carte, iii. p. 345.

from England to the Netherlands, warn the queen of the danger to which it was exposed; and, acquainting her with what was necessary for its security, in vain did he offer to reinforce the garrison during winter with a detachment of his own troops. Mary's counsellors, though obsequious to her in all points wherein religion was concerned, distrusted, as much as the rest of their countrymen, every proposition that came from her husband; and suspecting this to be an artifice of Philip's in order to gain the command of the town, they neglected his intelligence, declined his offer, and left Calais with less than a fourth part of the garrison requisite for its defence. 1558.

Guise pushes the siege with vigour;

His knowledge of this encouraged the duke of Guise to venture on an enterprise, that surprised his own countrymen, no less than his enemies. As he knew that its success depended on conducting his operations with such rapidity as would afford the English no time for throwing relief into the town by sea, and prevent Philip from giving him any interruption by land, he pushed the attack with a degree of vigour little known in carrying on sieges, during that age. He drove the English from fort St. Agatha at the first assault. He obliged them to abandon the fort of Newnhambridge, after defending it only three days. He took the castle which commanded the harbour by storm; and, on the eighth day after he appeared before Calais, compelled the governor to surrender, as his feeble garrison, which did not exceed five hundred men, was worn out with the fatigue of sustaining so many attacks, and defending such extensive works.

takes the town,

and likewise Guisnes and Hames.

The duke of Guise, without allowing the English time to recover from the consternation occasioned by this blow, immediately invested Guisnes, the garrison of which, though more numerous, defended itself with less vigour, and, after standing one brisk assault, gave up the town. The castle of Hames was abandoned by

1558. the troops posted there, without waiting the approach of the enemy.

The splendour and effect of these conquests.

Thus, in a few days, during the depth of winter, and at a time when the fatal battle of St. Quentin had so depressed the sanguine spirit of the French, that their utmost aim was to protect their own country, without dreaming of making conquests on the enemy, the enterprising valour of one man drove the English out of Calais, after they had held it two hundred and ten years, and deprived them of every foot of land in a kingdom, where their dominions had been once very extensive. This exploit, at the same time that it gave an high idea of the power and resources of France to all Europe, set the duke of Guise, in the opinion of his countrymen, far above all the generals of the age. They celebrated his conquests with immoderate transports of joy; while the English gave vent to all the passions which animate a high-spirited people when any great national calamity is manifestly owing to the ill conduct of their rulers. Mary and her ministers, formerly odious, were now contemptible in their eyes. All the terrours of her severe and arbitrary administration could not restrain them from uttering execrations and threats against those who, having wantonly involved the nation in a quarrel wherein it was nowise interested, had, by their negligence or incapacity, brought irreparable disgrace on their country, and lost the most valuable possession belonging to the English crown.

The king of France imitated the conduct of its former conqueror, Edward the third, with regard to Calais. He commanded all the English inhabitants to quit the town; and giving their houses to his own subjects, whom he allured to settle there by granting them various immunities, he left a numerous garrison, under an experienced governor, for their defence. After this, his victorious army was conducted into

quarters of refreshment, and the usual inaction of winter returned. 1558.

During these various operations, Ferdinand assembled the college of electors at Francfort, in order to lay before them the instrument, whereby Charles the fifth had resigned the imperial crown, and transferred it to him. This he had hitherto delayed, on account of some difficulties which had occurred concerning the formalities requisite in supplying a vacancy occasioned by an event, to which there was no parallel in the annals of the empire. These being at length adjusted, the prince of Orange executed the commission with which he had been intrusted by Charles: the electors accepted of his resignation; declared Ferdinand his lawful successor; and put him in possession of all the ensigns of the imperial dignity. Feb. 24. Charles's resignation of the imperial crown.

But when the new emperor sent Gusman, his chancellor, to acquaint the pope with this transaction, to testify his reverence towards the holy see, and to signify that, according to form, he would soon despatch an ambassador extraordinary to treat with his holiness concerning his coronation; Paul, whom neither experience nor disappointments could teach to bring down his lofty ideas of the papal prerogative to such a moderate standard as suited the genius of the times, refused to admit the envoy into his presence, and declared all the proceedings at Francfort irregular and invalid. He contended that the pope, as the vicegerent of Christ, was intrusted with the keys both of spiritual and of civil government; that from him the imperial jurisdiction was derived; that though his predecessors had authorized the electors to choose an emperor whom the holy see confirmed, this privilege was confined to those cases when a vacancy was occasioned by death; that the instrument of Charles's resignation had been presented in an improper court, as it belonged to the pope alone to reject or to accept of it, and to nominate a person to fill the imperial throne; The pope refuses to acknowledge Ferdinand as emperor.

1558. that, setting aside all these objections, Ferdinand's election laboured under two defects, which alone were sufficient to render it void, for the protestant electors had been admitted to vote, though, by their apostacy from the catholic faith, they had forfeited that and every other privilege of the electoral office; and Ferdinand, by ratifying the concessions of several diets in favour of heretics, had rendered himself unworthy of the imperial dignity, which was instituted for the protection, not for the destruction, of the church. But after thundering out these extravagant maxims, he added, with an appearance of condescension, that if Ferdinand would renounce all title to the imperial crown, founded on the election at Francfort, make professions of repentance for his past conduct, and supplicate him, with due humility, to confirm Charles's resignation, as well as his own assumption to the empire, he might expect every mark of favour from his paternal clemency and goodness. Gusman, though he had foreseen considerable difficulties in his negotiation with the pope, little expected that he would have revived those antiquated and wild pretensions, which astonished him so much, that he hardly knew in what tone he ought to reply. He prudently declined entering into any controversy concerning the nature or extent of the papal jurisdiction; and confining himself to the political considerations, which should determine the pope to recognise an emperor already in possession, he endeavoured to place them in such a light, as he imagined could scarcely fail to strike Paul, if he were not altogether blind to his own interest. Philip seconded Gusman's arguments with great earnestness, by an ambassador whom he sent to Rome on purpose, and besought the pope to desist from claims so unseasonable, as might not only irritate and alarm Ferdinand and the princes of the empire, but furnish the enemies of the holy see with a new reason for representing its jurisdiction as incompatible with the rights

of princes, and subversive of all civil authority. But Paul, who deemed it a crime to attend to any consideration suggested by human prudence or policy, when he thought himself called upon to assert the prerogatives of the papal see, remained inflexible; and during his pontificate, Ferdinand was not acknowledged as emperor by the court of Rome[s]. 1558.

While Henry was intent upon his preparations for the approaching campaign, he received accounts of the issue of his negotiations in Scotland. Long experience having at last taught the Scots the imprudence of involving their country in every quarrel between France and England, neither the solicitations of the French ambassador, nor the address and authority of the queen regent, could prevail on them to take arms against a kingdom with which they were at peace. On this occasion, the ardour of a martial nobility and of a turbulent people was restrained by regard for the public interest and tranquillity, which, in former deliberations of this kind, had been seldom attended to by a nation always prone to rush into every new war. But though the Scots adhered with steadiness to their pacific system, they were extremely ready to gratify the French king in another particular, which he had given in charge to his ambassador. Henry endeavours to excite the Scots against England.

The young queen of Scots had been affianced to the dauphin in the year one thousand five hundred and forty-eight, and having been educated since that time in the court of France, she had grown up to be the most amiable and one of the most accomplished princesses of that age. Henry demanded the consent of her subjects to the celebration of the marriage; and a parliament, which was held for that purpose, appointed eight commissioners to represent the whole body of the nation at that solemnity, with power to sign such deeds Marriage of the dauphin with the queen of Scots.

[s] Godleveus de Abdicat. Car. V. ap. Gold. Polit. Imper. p. 392. Pallav. lib. xiii. 189. Mém. de Ribier, ii. 746. 759.

1558. as might be requisite before it was concluded. In settling the articles of the marriage, the Scots took every precaution that prudence could dictate, in order to preserve the liberty and independence of their country; while the French used every art to secure to the dauphin the conduct of affairs during the queen's life, and the succession of the crown on the event of her demise.

April 14. The marriage was celebrated with pomp suitable to the dignity of the parties, and the magnificence of a court at that time the most splendid in Europe[t]. Thus Henry, in the course of a few months, had the glory of recovering an important possession, which had anciently belonged to the crown of France, and of adding to it the acquisition of a new kingdom. By this event, too, the duke of Guise acquired new consideration and importance; the marriage of his niece to the apparent heir of the crown raising him so far above the condition of other subjects, that the credit which he had gained by his great actions seemed thereby to be rendered no less permanent than it was extensive.

The campaign opened.

When the campaign opened, soon after the dauphin's marriage, the duke of Guise was placed at the head of the army, with the same unlimited powers as formerly. Henry had received such liberal supplies from his subjects, that the troops under his command were both numerous and well appointed; while Philip, exhausted by the extraordinary efforts of the preceding year, had been obliged to dismiss so many of his forces during the winter, that he could not bring an army into the field capable of making head against the enemy. The duke of Guise did not lose the favourable opportunity which his superiority afforded him. He invested Thionville in the dutchy of Luxembourg, one of the strongest towns on the frontier of the Netherlands, and of great importance to France by its neigh-

[t] Keith's History of Scotland, p. 73. Append. p. 13. Corps. Diplom. v. p. 21.

bourhood to Metz; and, notwithstanding the obstinate valour with which it was defended, he forced it to capitulate after a siege of three weeks[u]. 1558. June 22.

The French army defeated at Gravelines.

But the success of this enterprise, which it was expected would lead to other conquests, was more than counterbalanced by an event that happened in another part of the Low Countries. The maréchal de Termes, governor of Calais, having penetrated into Flanders without opposition, invested Dunkirk with an army of fourteen thousand men, and took it by storm on the fifth day of the siege. Hence he advanced towards Nieuport, which must have soon fallen into his hands, if the approach of the count of Egmont with a superior army had not made it prudent to retreat. The French troops were so much encumbered with the booty which they had got at Dunkirk, or by ravaging the open country, that they moved slowly; and Egmont, who had left his heavy baggage and artillery behind him, marched with such rapidity, that he came up with them near Gravelines, and attacked them with the utmost impetuosity. De Termes, who had the choice of the ground, having posted his troops to advantage in the angle formed by the mouth of the river Aa and the sea, received him with great firmness. Victory remained, for some time, in suspense, the desperate valour of the French, who foresaw the unavoidable destruction that must follow upon a rout in an enemy's country, counterbalancing the superior number of the Flemings, when one of those accidents to which human prudence does not extend, decided the contest in favour of the latter. A squadron of English ships of war, which was cruising on the coast, being drawn by the noise of the firing towards the place of the engagement, entered the river Aa, and turned its great guns against the right wing of the French, with such effect as immediately broke that body, and spread terrour

[u] Thuan. lib. xx. 690.

1558. and confusion through the whole army. The Flemings, to whom assistance so unexpected and so seasonable gave fresh spirit, redoubled their efforts, that they might not lose the advantage which fortune had presented them, or give the enemy time to recover from their consternation, and the rout of the French soon became universal. Near two thousand were killed on the spot; a greater number fell by the hands of the peasants, who, in revenge for the cruelty with which their country had been plundered, pursued the fugitives, and massacred them without mercy; the rest were taken prisoners, together with de Termes, their general, and many officers of distinction[x].

The duke of Guise opposed to the victorious army.

This signal victory, for which the count of Egmont was afterwards so ill requited by Philip, obliged the duke of Guise to relinquish all other schemes, and to hasten towards the frontier of Picardy, that he might oppose the progress of the enemy in that province. This disaster, however, reflected new lustre on his reputation, and once more turned the eyes of his countrymen towards him, as the only general on whose arms victory always attended, and in whose conduct as well as good fortune they could confide in every danger. Henry reinforced the duke of Guise's army with so many troops drawn from the adjacent garrisons, that it soon amounted to forty thousand men. That of the enemy, after the junction of Egmont with the duke of Savoy, was not inferior in number. They encamped at the distance of a few leagues from one another; and each monarch having joined his respective army, it was expected, after the vicissitudes of good and bad success during this and the former campaign, that a decisive battle would at last determine, which of the rivals should take the ascendant for the future, and give law to Europe. But though both had it in their power, neither of them discovered any inclination to bring the

[x] Thuan. lib. xx. 694.

determination of such an important point to depend upon the uncertain issue of a single battle. The fatal engagements at St. Quentin and Gravelines were too recent to be so soon forgotten; and the prospect of encountering the same troops, commanded by the same generals who had twice triumphed over his arms, inspired Henry with a degree of caution which was not common to him. Philip, of a genius averse to bold operations in war, naturally leaned to cautious measures, and was not disposed to hazard any thing against a general so fortunate and successful as the duke of Guise. Both monarchs, as if by agreement, stood on the defensive, and, fortifying their camps, carefully avoided every skirmish or rencounter that might bring on a general engagement. 1558.

Both monarchs begin to desire peace.

While the armies continued in this inaction, peace began to be mentioned in each camp, and both Henry and Philip discovered an inclination to listen to any overture that tended to reestablish it. The kingdoms of France and Spain had been engaged during half a century in almost continual wars, carried on at a great expense, and productive of no considerable advantage to either. Exhausted by extraordinary and unceasing efforts, which far exceeded those to which the nations of Europe had been accustomed before the rivalship between Charles the fifth and Francis the first, both nations longed so much for an interval of repose, in order to recruit their strength, that their sovereigns drew from them with difficulty the supplies necessary for carrying on hostilities. The private inclinations of both the kings concurred with those of their people. Philip was prompted to wish for peace by his fond desire of returning to Spain. Accustomed from his infancy to the climate and manners of that country, he was attached to it with such extreme predilection, that he never felt himself at ease in any other part of his dominions. But as he could not quit the Low Countries either with decency or safety, and venture on a

1558. voyage to Spain, during the continuance of war, the prospect of a pacification, which would put it in his power to execute his favourite scheme, was highly acceptable. Henry was no less desirous of being delivered from the burthen and occupations of war, that he might have leisure to turn his attention, and bend the whole force of his government, towards suppressing the opinions of the reformers, which were spreading with such rapidity in Paris, and other great towns of France, that they began to grow formidable to the established church.

An intrigue in the court of France facilitates it.

Besides these public and avowed considerations, arising from the state of the two hostile kingdoms, or from the wishes of their respective monarchs, there was a secret intrigue carried on in the court of France, which contributed as much as either of the other, to hasten and to facilitate the negotiation of a peace. The constable, Montmorency, during his captivity, beheld the rapid success and growing favour of the duke of Guise with the envy natural to a rival. Every advantage gained by the princes of Lorrain he considered as a fresh wound to his own reputation, and he knew with what malevolent address it would be improved to diminish his credit with the king, and to augment that of the duke of Guise. These arts, he was afraid, might, by degrees, work on the easy and ductile mind of Henry, so as to efface all remains of his ancient affection towards himself. But he could not discover any remedy for this, unless he were allowed to return home, that he might try whether, by his presence, he could defeat the artifices of his enemies, and revive those warm and tender sentiments which had long attached Henry to him, with a confidence so entire, as resembled rather the cordiality of private friendship, than the cold and selfish connexion between a monarch and one of his courtiers. While Montmorency was forming schemes and wishes for his return to France with much anxiety of mind, but with little hope of success,

an unexpected incident prepared the way for it. The cardinal of Lorrain, who had shared with his brother in the king's favour, and participated of the power which that conferred, did not bear prosperity with the same discretion as the duke of Guise. Intoxicated with their good fortune, he forgot how much they had been indebted for their present elevation to their connexions with the dutchess of Valentinois, and vainly ascribed all to the extraordinary merit of their family. This led him not only to neglect his benefactress, but to thwart her schemes, and to talk with a sarcastic liberty of her character and person. That singular woman, who, if we may believe contemporary writers, retained the beauty and charms of youth at the age of threescore, and on whom it is certain that Henry still doted with all the fondness of love, felt this injury with sensibility, and set herself with eagerness to inflict the vengeance which it merited. As there was no method of supplanting the princes of Lorrain so effectually as by a coalition of interests with the constable, she proposed the marriage of her granddaughter with one of his sons, as the bond of their future union; and Montmorency readily gave his consent to the match. Having thus cemented their alliance, the dutchess employed all her influence with the king, in order to confirm his inclinations towards peace, and to induce him to take the steps necessary for attaining it. She insinuated that any overture of that kind would come with great propriety from the constable, and, if intrusted to the conduct of his prudence, could hardly fail of success. 1558.

Henry, long accustomed to commit all affairs of importance to the management of the constable, and needing only this encouragement to return to his ancient habits, wrote to him immediately with his usual familiarity and affection, empowering him, at the same time, to take the first opportunity of sounding Philip and his ministers with regard to peace. Montmorency

Henry commits the negotiation to Montmorency.

1558. made his application to Philip by the most proper channel. He opened himself to the duke of Savoy, who, notwithstanding the high command to which he had been raised, and the military glory which he had acquired in the Spanish service, was weary of remaining in exile, and languished to return into his paternal dominions. As there was no prospect of his recovering possession of them by force of arms, he considered a definitive treaty of peace between France and Spain, as the only event by which he could hope to obtain restitution. Being no stranger to Philip's private wishes with regard to peace, he easily prevailed on him not only to discover a disposition on his part towards accommodation, but to permit Montmorency to return, on his parole, to France, that he might confirm his own sovereign in his pacific sentiments. Henry received the constable with the most flattering marks of regard; absence, instead of having abated or extinguished the monarch's friendship, seemed to have given it new ardour. Montmorency, from the moment of his appearance in court, assumed, if possible, a higher place than ever in his affection, and a more perfect ascendant over his mind. The cardinal of Lorrain and duke of Guise prudently gave way to a tide of favour too strong for them to oppose, and, confining themselves to their proper departments, permitted, without any struggle, the constable and dutchess of Valentinois to direct public affairs at their pleasure. They soon prevailed on the king to nominate plenipotentiaries to treat of peace. Philip did the same. The abbey of Cercamp was fixed on as the place of congress; and all military operations were immediately terminated by a suspension of arms.

Death of Charles the fifth.

While these preliminary steps were taking towards a treaty which restored tranquillity to Europe, Charles the fifth, whose ambition had so long disturbed it, ended his days in the monastery of St. Justus. When Charles entered this retreat, he formed such a plan of

life for himself, as would have suited the condition of a private gentleman of a moderate fortune. His table was neat, but plain; his domestics few; his intercourse with them familiar; all the cumbersome and ceremonious forms of attendance on his person were entirely abolished, as destructive of that social ease and tranquillity which he courted, in order to sooth the remainder of his days. As the mildness of the climate, together with his deliverance from the burthens and cares of government, procured him, at first, a considerable remission from the acute pains with which he had been long tormented, he enjoyed, perhaps, more complete satisfaction in this humble solitude, than all his grandeur had ever yielded him. The ambitious thoughts and projects which had so long engrossed and disquieted him, were quite effaced from his mind: far from taking any part in the political transactions of the princes of Europe, he restrained his curiosity even from any inquiry concerning them; and he seemed to view the busy scene which he had abandoned, with all the contempt and indifference arising from his thorough experience of its vanity, as well as from the pleasing reflection of having disentangled himself from its cares. 1558.

His amusements in his retreat.

Other amusements and other objects now occupied him. Sometimes he cultivated the plants in his garden with his own hands; sometimes he rode out to the neighbouring wood on a little horse, the only one that he kept, attended by a single servant on foot. When his infirmities confined him to his apartment, which often happened, and deprived him of these more active recreations, he either admitted a few gentlemen who resided near the monastery to visit him, and entertained them familiarly at his table; or he employed himself in studying mechanical principles, and in forming curious works of mechanism, of which he had always been remarkably fond, and to which his genius was peculiarly turned. With this view he had en-

1558. gaged Turriano, one of the most ingenious artists of that age, to accompany him in his retreat. He laboured together with him in framing models of the most useful machines, as well as in making experiments with regard to their respective powers; and it was not seldom that the ideas of the monarch assisted or perfected the inventions of the artist. He relieved his mind, at intervals, with slighter and more fantastic works of mechanism, in fashioning puppets, which, by the structure of internal springs, mimicked the gestures and actions of men, to the astonishment of the ignorant monks, who, beholding movements which they could not comprehend, sometimes distrusted their own senses, and sometimes suspected Charles and Turriano of being in compact with invisible powers. He was particularly curious with regard to the construction of clocks and watches; and having found, after repeated trials, that he could not bring any two of them to go exactly alike, he reflected, it is said, with a mixture of surprise as well as regret, on his own folly, in having bestowed so much time and labour on the more vain attempt of bringing mankind to a precise uniformity of sentiment concerning the profound and mysterious doctrines of religion.

His more serious occupations.

But in what manner soever Charles disposed of the rest of his time, he constantly reserved a considerable portion of it for religious exercises. He regularly attended divine service in the chapel of the monastery, every morning and evening; he took great pleasure in reading books of devotion, particularly the works of St. Augustine and St. Bernard; and conversed much with his confessor, and the prior of the monastery, on pious subjects. Thus did Charles pass the first year of his retreat, in a manner not unbecoming a man perfectly disengaged from the affairs of the present life, and standing on the confines of a future world; either in innocent amusements, which soothed his pains, and

relieved a mind worn out with excessive application to business; or in devout occupations, which he deemed necessary in preparing for another state. 1558.

But about six months before his death, the gout, after a longer intermission than usual, returned with a proportional increase of violence. His shattered constitution had not vigour enough remaining to withstand such a shock. It enfeebled his mind as much as his body, and from this period we hardly discern any traces of that sound and masculine understanding, which distinguished Charles among his contemporaries. An illiberal and timid superstition depressed his spirit. He had no relish for amusements of any kind. He endeavoured to conform, in his manner of living, to all the rigour of monastic austerity. He desired no other society than that of monks, and was almost continually employed with them in chanting the hymns of the missal. As an expiation for his sins, he gave himself the discipline in secret with such severity, that the whip of cords which he employed as the instrument of his punishment, was found after his decease tinged with his blood. Nor was he satisfied with these acts of mortification, which, however severe, were not unexampled. The timorous and distrustful solicitude which always accompanies superstition, still continued to disquiet him, and, depreciating all the devout exercises in which he had hitherto been engaged, prompted him to aim at something extraordinary, at some new and singular act of piety that would display his zeal, and merit the favour of heaven. The act on which he fixed was as wild and uncommon, as any that superstition ever suggested to a weak and disordered fancy. He resolved to celebrate his own obsequies before his death. He ordered his tomb to be erected in the chapel of the monastery. His domestics marched thither in funeral procession, with black tapers in their hands. He himself followed in his shroud. He was laid in his coffin with much solemnity. The service

The causes of his death.

1558. for the dead was chanted, and Charles joined in the prayers which were offered up for the rest of his soul, mingling his tears with those which his attendants shed, as if they had been celebrating a real funeral. The ceremony closed with sprinkling holy water on the coffin in the usual form; and all the assistants retiring, the doors of the chapel were shut. Then Charles rose out of the coffin, and withdrew to his apartment, full of those awful sentiments, which such a singular solemnity was calculated to inspire. But either the fatiguing length of the ceremony, or the impression which the image of death left on his mind, affected him so much, that next day he was seized with a fever. His feeble frame could not long resist its violence, and he expired on the twenty-first of September, after a life of fifty-eight years, six months, and twenty-five days[y].

His character.

As Charles was the first prince of the age in rank and dignity, the part which he acted, whether we consider the greatness, the variety, or the success of his undertakings, was the most conspicuous. It is from an attentive observation of his conduct, not from the exaggerated praises of the Spanish historians, or the undistinguishing censure of the French, that a just idea of Charles's genius and abilities is to be collected. He possessed qualities so peculiar, that they strongly mark his character, and not only distinguish him from the princes who were his contemporaries, but account for that superiority over them which he so long maintained. In forming his schemes, he was, by nature, as well as by habit, cautious and considerate. Born with talents which unfolded themselves slowly, and were late in attaining maturity, he was accustomed to ponder every subject that demanded his consideration, with a careful and deliberate attention. He bent the

[y] Strada de Bello Belg. lib. i. 11. Thuan. p. 723. Sandov. ii. p. 609, etc. Miniana, Contin. Marianæ, vol. iv. 216. Vera y Zuniga, Vida de Carlos, p. 111.

whole force of his mind towards it, and dwelling upon it with a serious application, undiverted by pleasure, and hardly relaxed by any amusement, he revolved it, in silence, in his own breast. He then communicated the matter to his ministers, and, after hearing their opinions, took his resolution with a decisive firmness, which seldom follows such slow and seemingly hesitating consultations. Of consequence, Charles's measures, instead of resembling the desultory and irregular sallies of Henry the eighth, or Francis the first, had the appearance of a consistent system, in which all the parts were arranged, all the effects were foreseen, and even every accident was provided for. His promptitude in execution was no less remarkable than his patience in deliberation. He did not discover greater sagacity in his choice of the measures which it was proper to pursue, than fertility of genius in finding out the means for rendering his pursuit of them successful. Though he had naturally so little of the martial turn, that, during the most ardent and bustling period of life, he remained in the cabinet inactive; yet, when he chose at length to appear at the head of his armies, his mind was so formed for vigorous exertions in every direction, that he acquired such knowledge in the art of war, and such talents for command, as rendered him equal in reputation and success to the most able generals of the age. But Charles possessed, in the most eminent degree, the science which is of greatest importance to a monarch, that of knowing men, and of adapting their talents to the various departments which he allotted to them. From the death of Chièvres to the end of his reign, he employed no general in the field, no minister in the cabinet, no ambassador to a foreign court, no governor of a province, whose abilities were inadequate to the trust which he reposed in them. Though destitute of that bewitching affability of manners, which gained Francis the hearts of all who approached his person, he was no stranger to the virtues which secure

1558.

1558. fidelity and attachment. He placed unbounded confidence in his generals; he rewarded their services with munificence; he neither envied their fame, nor discovered any jealousy of their power. Almost all the generals who conducted his armies, may be placed on a level with those illustrious personages, who have attained the highest eminence of military glory; and his advantages over his rivals are to be ascribed so manifestly to the superior abilities of the commanders whom he set in opposition to them, that this might seem to detract, in some degree, from his own merit, if the talent of discovering, and steadiness in employing, such instruments, were not the most undoubted proofs of a capacity for government.

There were, nevertheless, defects in his political character which must considerably abate the admiration due to his extraordinary talents. Charles's ambition was insatiable; and though there seems to be no foundation for an opinion prevalent in his own age, that he had formed the chimerical project of establishing an universal monarchy in Europe, it is certain that his desire of being distinguished as a conqueror involved him in continual wars, which not only exhausted and oppressed his subjects, but left him little leisure for giving attention to the interior police and improvement of his kingdoms, the great objects of every prince who makes the happiness of his people the end of his government. Charles, at a very early period of life, having added the imperial crown to the kingdoms of Spain, and to the hereditary dominions of the houses of Austria and Burgundy, this opened to him such a vast field of enterprise, and engaged him in schemes so complicated as well as arduous, that, feeling his power to be unequal to the execution of them, he had often recourse to low artifices, unbecoming his superior talents, and sometimes ventured on such deviations from integrity, as were dishonourable in a great prince. His insidious and fraudulent policy appeared

more conspicuous, and was rendered more odious, by a comparison with the open and undesigning character of his contemporaries, Francis the first, and Henry the eighth. This difference, though occasioned chiefly by the diversity of their tempers, must be ascribed, in some degree, to such an opposition in the principles of their political conduct, as affords some excuse for this defect in Charles's behaviour, though it cannot serve as a justification of it. Francis and Henry seldom acted but from the impulse of their passions, and rushed headlong towards the object in view. Charles's measures, being the result of cool reflection, were disposed into a regular system, and carried on upon a concerted plan. Persons who act in the former manner, naturally pursue the end in view without assuming any disguise, or displaying much address: such as hold the latter course, are apt, in forming as well as in executing their designs, to employ such refinements, as always lead to artifice in conduct, and often degenerate into deceit. 1558.

The circumstances transmitted to us with respect to Charles's private deportment and character, are fewer, and less interesting, than might have been expected from the great number of authors who have undertaken to write an account of his life. These are not the object of this history, which aims more at representing the great transactions of the reign of Charles the fifth, and pointing out the manner in which they affected the political state of Europe, than at delineating his private virtues or defects.

Conference in order to peace.

The plenipotentiaries of France, Spain, and England, continued their conferences at Cercamp; and though each of them, with the usual art of negotiators, made at first very high demands, in the name of their respective courts, yet as they were all equally desirous of peace, they would have consented reciprocally to such abatements and restrictions of their claims, as must have removed every obstacle to an

1558. accommodation. The death of Charles the fifth was a new motive with Philip to hasten the conclusion of a treaty, as it increased his impatience for returning into Spain, where there was now no person greater or more illustrious than himself. But, in spite of the concurring wishes of all the parties interested, an event happened which occasioned an unavoidable delay in their negotiations. About a month after the opening of the conferences at Cercamp, Mary of England ended her short and inglorious reign, and Elizabeth, her sister, was immediately proclaimed queen with universal joy. As the powers of the English plenipotentiaries expired on the death of their mistress, they could not proceed until they received a commission and instructions from their new sovereign.

Nov. 17. Death of Mary of England.

Henry and Philip court Elizabeth her successor.

Henry and Philip beheld Elizabeth's elevation to the throne with equal solicitude. As during Mary's jealous administration, under the most difficult circumstances, and in a situation extremely delicate, that princess had conducted herself with prudence and address far exceeding her years, they had conceived an high idea of her abilities, and already formed expectations of a reign very different from that of her sister. Equally sensible of the importance of gaining her favour, both monarchs set themselves with emulation to court it, and employed every art in order to insinuate themselves into her confidence. Each of them had something meritorious, with regard to Elizabeth, to plead in his own behalf. Henry had offered her a retreat in his dominions, if the dread of her sister's violence should force her to fly for safety out of England. Philip, by his powerful intercession, had prevented Mary from proceeding to the most fatal extremities against her sister. Each of them endeavoured now to avail himself of the circumstances in his favour. Henry wrote to Elizabeth soon after her accession, with the warmest expressions of regard and friendship. He represented the war which had unhappily been

kindled between their kingdoms, not as a national quarrel, but as the effect of Mary's blind partiality to her husband, and fond compliance with all his wishes. He entreated her to disengage herself from an alliance which had proved so unfortunate to England, and to consent to a separate peace with him, without mingling her interests with those of Spain, from which they ought now to be altogether disjoined. Philip, on the other hand, unwilling to lose his connexion with England, the importance of which, during a rupture with France, he had so recently experienced, not only vied with Henry in declarations of esteem for Elizabeth, and in professions of his resolution to cultivate the strictest amity with her; but, in order to confirm and perpetuate their union, he offered himself to her in marriage, and undertook to procure a dispensation from the pope for that purpose. 1558.

Elizabeth's deliberation concerning her conduct.

Elizabeth weighed the proposals of the two monarchs attentively, and with that provident discernment of her true interest which was conspicuous in all her deliberations. She gave some encouragement to Henry's overture of a separate negotiation, because it opened a channel of correspondence with France, which she might find to be of great advantage, if Philip should not discover sufficient zeal and solicitude for securing to her proper terms in the joint treaty. But she ventured on this step with the most cautious reserve, that she might not alarm Philip's suspicious temper, and lose an ally in attempting to gain an enemy[z]. Henry himself, by an unpardonable act of indiscretion, prevented her from carrying her intercourse with him to such a length as might have offended or alienated Philip. At the very time when he was courting Elizabeth's friendship with the greatest assiduity, he yielded with an inconsiderate facility to the solicitations of the princes of Lorrain, and allowed his daughter-in-law,

[z] Forbes, i. p. 4.

1558. the queen of Scots, to assume the title and arms of queen of England. This ill-timed pretension, the source of many calamities to the unfortunate queen of Scots, extinguished at once all the confidence that might have grown between Henry and Elizabeth, and left in its place distrust, resentment, and antipathy. Elizabeth soon found that she must unite her interests closely with Philip's, and expect peace only from negotiations carried on in conjunction with him[a].

She empowers her ambassadors to treat of peace.

As she had granted a commission, immediately after her accession, to the same plenipotentiaries whom her sister had employed, she now instructed them to act, in every point, in concert with the plenipotentiaries of Spain, and to take no step until they had previously consulted with them[b]. But though she deemed it prudent to assume this appearance of confidence in the Spanish monarch, she knew precisely how far to carry it; and discovered no inclination to accept of that extraordinary proposal of marriage which Philip had made to her. The English had expressed so openly their detestation of her sister's choice of him, that it would have been highly imprudent to have exasperated them by renewing that odious alliance. She was too well acquainted with Philip's harsh imperious temper, to think of him for a husband. Nor could she admit a dispensation from the pope to be sufficient to authorize her marrying him, without condemning her father's divorce from Catharine of Aragon, and acknowledging, of consequence, that her mother's marriage was null, and her own birth illegitimate. But though she determined not to yield to Philip's addresses, the situation of her affairs rendered it dangerous to reject them; she returned her answer, therefore, in terms which were evasive, but so tempered with respect, that though they gave him no reason

[a] Strype's Annals of the Reformation, i. p. 11. Carte's Hist. of England, vol. iii. p. 375.

[b] Forbes, Full View, i. p. 37. 40.

to be secure of success, they did not altogether extinguish his hopes. 1558.

By this artifice, as well as by the prudence with which she concealed her sentiments and intentions concerning religion, for some time after her accession, she so far gained upon Philip, that he warmly espoused her interest in the conferences which were renewed at Cercamp, and afterwards removed to Chateau-Cambresis. A definitive treaty, which was to adjust the claims and pretensions of so many princes, required the examination of such a variety of intricate points, and led to such infinite and minute details, as drew out the negotiations to a great length. But the constable Montmorency exerted himself with such indefatigable zeal and industry, repairing alternately to the courts of Paris and Brussels, in order to obviate or remove every difficulty, that all points in dispute were adjusted at length in such a manner, as to give entire satisfaction in every particular to Henry and Philip; and the last hand was ready to be put to the treaty between them. Negotiations at Chateau-Cambresis. 1559. Feb. 6.

The claims of England remained as the only obstacle to retard it. Elizabeth demanded the restitution of Calais, in the most peremptory tone, as an essential condition of her consenting to peace: Henry refused to give up that important conquest; and both seemed to have taken their resolution with unalterable firmness. Philip warmly supported Elizabeth's pretensions to Calais, not merely from a principle of equity towards the English nation, that he might appear to have contributed to their recovering what they had lost by espousing his cause; nor solely with a view of soothing Elizabeth by this manifestation of zeal for her interest; but in order to render France less formidable, by securing to her ancient enemy this easy access into the heart of the kingdom. The earnestness, however, with which he seconded the arguments of the English plenipotentiaries, soon began to relax. Difficulties with regard to the claims of England.

1559. During the course of the negotiation, Elizabeth, who now felt herself firmly seated on her throne, began to take such open and vigorous measures, not only for overturning all that her sister had done in favour of popery, but for establishing the protestant church on a firm foundation, as convinced Philip that his hopes of an union with her had been from the beginning vain, and were now desperate. From that period, his interpositions in her favour became more cold and formal, flowing merely from a regard to decorum, or from the consideration of remote political interests. Elizabeth, having reason to expect such an alteration in his conduct, quickly perceived it. But as nothing would have been of greater detriment to her people, or more inconsistent with her schemes of domestic administration, than the continuance of war, she saw the necessity of submitting to such conditions as the situation of her affairs imposed, and that she must reckon upon being deserted by an ally who was now united to her by a very feeble tie, if she did not speedily reduce her demands to what was moderate and attainable. She accordingly gave new instructions to her ambassadors; and Philip's plenipotentiaries acting as mediators between the French and them[c], an expedient was fallen upon, which, in some degree, justified Elizabeth's departing from the rigour of her first demand with regard to Calais. All lesser articles were settled without much discussion or delay. Philip, that he might not appear to have abandoned the English, insisted that the treaty between Henry and Elizabeth should be concluded in form, before that between the French monarch and himself. The one was signed on the second day of April, the other on the day following.

Articles of peace between France and England.

The treaty of peace between France and England contained no articles of real importance, but that which respected Calais. It was stipulated: That the

[c] Forbes, i. p. 59.

king of France should retain possession of that town, with all its dependencies, during eight years; that, at the expiration of that term, he should restore it to England; that, in case of non-performance, he should forfeit five hundred thousand crowns, for the payment of which sum, seven or eight wealthy merchants, who were not his subjects, should grant security; that five persons of distinction should be given as hostages until that security were provided; that, although the forfeit of five hundred thousand crowns should be paid, the right of England to Calais should still remain entire, in the same manner as if the term of eight years were expired; that the king and queen of Scotland should be included in the treaty; that if they, or the French king, should violate the peace by any hostile action, Henry should be obliged instantly to restore Calais; that, on the other hand, if any breach of the treaty proceeded from Elizabeth, then Henry and the king and queen of Scots were absolved from all the engagements which they had come under by this treaty. 1559.

The views of both parties with respect to these.

Notwithstanding the studied attention with which so many precautions were taken, it is evident that Henry did not intend the restitution of Calais, nor is it probable that Elizabeth expected it. It was hardly possible that she could maintain, during the course of eight years, such perfect concord both with France and Scotland, as not to afford Henry some pretext for alleging that she had violated the treaty. But even if that term should elapse without any ground for complaint, Henry might then choose to pay the sum stipulated, and Elizabeth had no method of asserting her right but by force of arms. However, by throwing the articles in the treaty with regard to Calais into this form, Elizabeth satisfied her subjects of every denomination; she gave men of discernment a striking proof of her address, in palliating what she could not prevent; and amused the multitude, to whom the cession of such an important place would have appeared alto-

1559. gether infamous, with the prospect of recovering in a short time that favourite possession.

An expedient which promotes peace between France and Spain.

The expedient which Montmorency employed, in order to facilitate the conclusion of peace between France and Spain, was the negotiating two treaties of marriage, one between Elizabeth, Henry's eldest daughter, and Philip, who supplanted his son, the unfortunate don Carlos, to whom that princess had been promised in the former conferences at Cercamp; the other between Margaret, Henry's only sister, and the duke of Savoy. For, however feeble the ties of blood may often be among princes, or how little soever they may regard them when pushed on to act by motives of ambition, they assume, on other occasions, the appearance of being so far influenced by these domestic affections, as to employ them to justify measures and concessions which they find to be necessary, but know to be impolitic or dishonourable. Such was the use Henry made of the two marriages to which he gave his consent. Having secured an honourable establishment for his sister and his daughter, he, in consideration of these, granted terms both to Philip and the duke of Savoy, of which he would not, on any other account, have ventured to approve.

The terms of pacification.

The principal articles in the treaty between France and Spain were: That a sincere and perpetual amity should be established between the two crowns and their respective allies; that the two monarchs should labour in concert to procure the convocation of a general council, in order to check the progress of heresy, and restore unity and concord to the christian church; that all conquests made by either party, on this side of the Alps, since the commencement of the war in one thousand five hundred and fifty-one, should be mutually restored; that the dutchy of Savoy, the principality of Piedmont, the country of Bresse, and all the other territories formerly subject to the dukes of Savoy, should be restored to Emanuel Philibert,

immediately after the celebration of his marriage with Margaret of France, the towns of Turin, Quiers, Pignerol, Chivaz, and Villanova excepted, of which Henry should keep possession, until his claims to these places, in right of his grandmother, should be tried and decided in course of law; that as long as Henry retained these places in his hands, Philip should be at liberty to keep garrisons in the towns of Vercelli and Asti; that the French king should immediately evacuate all the places which he held in Tuscany and the Sienese, and renounce all future pretensions to them; that he should restore the marquisate of Montferrat to the duke of Mantua; that he should receive the Genoese into favour, and give up to them the towns which he had conquered in the island of Corsica; that none of the princes or states, to whom these cessions were made, should call their subjects to account for any part of their conduct while under the dominion of their enemies, but should bury all past transactions in oblivion. The pope, the emperor, the kings of Denmark, Sweden, Poland, Portugal, the king and queen of Scots, and almost every prince and state in christendom, were comprehended in this pacification as the allies either of Henry or of Philip[d]. 1559.

Which reestablishes tranquillity in Europe.

Thus, by this famous treaty, peace was reestablished in Europe. All the causes of discord which had so long embroiled the powerful monarchs of France and Spain, that had transmitted hereditary quarrels and wars from Charles to Philip, and from Francis to Henry, seemed to be wholly removed, or finally terminated. The French alone complained of the unequal conditions of a treaty, into which an ambitious minister, in order to recover his liberty, and an artful mistress, that she might gratify her resentment, had seduced their too easy monarch. They exclaimed loudly against the folly of giving up to the enemies of

[d] Recueil des Traités, tom. ii. 287.

1559. France an hundred and eighty-nine fortified places, in the Low Countries or in Italy, in return for the three insignificant towns of St. Quentin, Ham, and Catelet. They considered it as an indelible stain upon the glory of the nation, to renounce in one day territories so extensive, and so capable of being defended, that the enemy could not have hoped to wrest them out of its hands, after many years of victory.

The peace between France and Spain ratified.

But Henry, without regarding the sentiments of his people, or being moved by the remonstrances of his council, ratified the treaty, and executed with great fidelity whatever he had stipulated to perform. The duke of Savoy repaired with a numerous retinue to Paris, in order to celebrate his marriage with Henry's sister. The duke of Alva was sent to the same capital, at the head of a splendid embassy, to espouse Elizabeth in name of his master. They were received with extraordinary magnificence by the French court.

Death of Henry. July 10.

Amidst the rejoicings and festivities, on that occasion, Henry's days were cut short by a singular and tragical accident. His son, Francis the second, a prince under age, of a weak constitution, and of a mind still more feeble, succeeded him. Soon after, Paul ended his violent and imperious pontificate, at enmity with all the world, and disgusted even with his own nephews. They, persecuted by Philip, and deserted by the succeeding pope, whom they had raised by their influence to the papal throne, were condemned to the punishment which their crimes and ambition had merited, and their death was as infamous as their lives had been criminal. Thus most of the personages, who had long sustained the principal characters on the great theatre of Europe, disappeared about the same time. A more known period of history opens at this æra; other actors enter upon the stage, with different views, as well as different passions; new contests arose, and new schemes of ambition occupied and disquieted mankind.

Upon reviewing the transactions of any active period

1559.

A general review of the whole period.

in the history of civilized nations, the changes which are accomplished appear wonderfully disproportioned to the efforts which have been exerted. Conquests are never very extensive or rapid, but among nations whose progress in improvement is extremely unequal. When Alexander the great, at the head of a gallant people, of simple manners, and formed to war by admirable military institutions, invaded a state sunk in luxury, and enervated by excessive refinement; when Genchizcan and Tamerlane, with their armies of hardy barbarians, poured in upon nations, enfeebled by the climate in which they lived, or by the arts and commerce which they cultivated, these conquerors, like a torrent, swept every thing before them, subduing kingdoms and provinces in as short a space of time as was requisite to march through them. But when nations are in a state similar to each other, and keep equal pace in their advances towards refinement, they are not exposed to the calamity of sudden conquests. Their acquisitions of knowledge, their progress in the art of war, their political sagacity and address are nearly equal. The fate of states in this situation depends not on a single battle. Their internal resources are many and various. Nor are they themselves alone interested in their own safety, or active in their own defence. Other states interpose, and balance any temporary advantage which either party may have acquired. After the fiercest and most lengthened contest, all the rival nations are exhausted, none are conquered. At length they find it necessary to conclude a peace, which restores to each almost the same power and the same territories of which they were formerly in possession.

The nations of Europe in a similar state during the sixteenth century.

Such was the state of Europe during the reign of Charles the fifth. No prince was so much superior to the rest in power, as to render his efforts irresistible, and his conquests easy. No nation had made progress in improvement so far beyond its neighbours as to have acquired a very manifest preeminence. Each state

1559. derived some advantage, or was subject to some inconvenience, from its situation or its climate; each was distinguished by something peculiar in the genius of its people, or the constitution of its government. But the advantages possessed by one state were counterbalanced by circumstances favourable to others; and this prevented any from attaining such superiority as might have been fatal to all. The nations of Europe, in that age, as in the present, were like one great family, there were some features common to all, which fixed a resemblance; there were certain peculiarities conspicuous in each, which marked a distinction. But there was not among them that wide diversity of character and of genius, which, in almost every period of history, hath exalted the Europeans above the inhabitants of the other quarters of the globe, and seems to have destined the one to rule, and the other to obey.

A remarkable change in the state of Europe during the reign of Charles the fifth.

But though the near resemblance and equality in improvement among the different nations of Europe, prevented the reign of Charles the fifth from being distinguished by such sudden and extensive conquests as occur in some other periods of history, yet, during the course of his administration, all the considerable states in Europe suffered a remarkable change in their political situation, and felt the influence of events, which have not hitherto spent their force, but still continue to operate in a greater or in a less degree. It was during his reign, and in consequence of the perpetual efforts to which his enterprising ambition roused him, that the different kingdoms of Europe acquired internal vigour; that they discerned the resources of which they were possessed; that they came both to feel their own strength, and to know how to render it formidable to others. It was during his reign, too, that the different kingdoms of Europe, which in former times seemed frequently to act as if they had been single and disjoined, became so thoroughly acquainted, and so intimately connected with each other, as to form

one great political system, in which each took a station, wherein it hath remained since that time with less variation than could have been expected after the events of two active centuries.

The progress, however, and acquisitions of the house of Austria, were not only greater than those of any other power, but more discernible and conspicuous. I have already enumerated the extensive territories which descended to Charles from his Austrian, Burgundian, and Spanish ancestors[e]. To these he himself added the imperial dignity; and, as if all this had been too little, the bounds of the habitable globe seemed to be extended, and a new world was subjected to his command. Upon his resignation, the Burgundian provinces, and the Spanish kingdoms with their dependencies, both in the old and new worlds, devolved to Philip. But Charles transmitted his dominions to his son, in a condition very different from that in which he himself had received them. They were augmented by the accession of new provinces; they were habituated to obey an administration which was no less vigorous than steady; they were accustomed to expensive and persevering efforts, which, though necessary in the contests between civilized nations, had been little known in Europe before the sixteenth century. The provinces of Friesland, Utrecht, and Overyssel, which he acquired by purchase from their former proprietors, and the dutchy of Gueldres, of which he made himself master, partly by force of arms, partly by the arts of negotiation, were additions of great value to his Burgundian dominions. Ferdinand and Isabella had transmitted to him all the provinces of Spain, from the bottom of the Pyrenees to the frontiers of Portugal; but as he maintained a perpetual peace with that kingdom, amidst the various efforts of his enterprising am-

The progress of the house of Austria;

[e] Vol. iii. p. 175 of this edition of Dr. Robertson's works.

bition, he made no acquisition of territory in that quarter.

particularly in Spain;

Charles had gained, however, a vast accession of power in this part of his dominions. By his success in the war with the commons of Castile, he exalted the regal prerogative upon the ruins of the privileges which formerly belonged to the people. Though he allowed the name of the cortes to remain, and the formality of holding it to be continued, he reduced its authority and jurisdiction almost to nothing, and modelled it in such a manner, that it became rather a junto of the servants of the crown, than an assembly of the representatives of the people. One member of the constitution being thus lopped off, it was impossible but that the other must feel the stroke, and suffer by it. The suppression of the popular power rendered the aristocratical less formidable. The grandees, prompted by the warlike spirit of the age, or allured by the honours which they enjoyed in a court, exhausted their fortunes in military service, or in attending on the person of their prince. They did not dread, perhaps did not observe, the dangerous progress of the royal authority, which leaving them the vain distinction of being covered in presence of their sovereign, stripped them, by degrees, of that real power which they possessed while they formed one body, and acted in concert with the people. Charles's success in abolishing the privileges of the commons, and in breaking the power of the nobles of Castile, encouraged Philip to invade the liberties of Aragon, which were still more extensive. The Castilians, accustomed to subjection themselves, assisted in imposing the yoke on their more happy and independent neighbours. The will of the sovereign became the supreme law in all the kingdoms of Spain; and princes who were not checked in forming their plans by the jealousy of the people, nor controlled in executing them

by the power of the nobles, could both aim at great objects, and call forth the whole strength of the monarchy in order to attain them.

also in other parts of Europe.

As Charles, by extending the royal prerogative, rendered the monarchs of Spain masters at home, he added new dignity and power to their crown by his foreign acquisitions. He secured to Spain the quiet possession of the kingdom of Naples, which Ferdinand had usurped by fraud, and held with difficulty. He united the dutchy of Milan, one of the most fertile and populous Italian provinces, to the Spanish crown; and left his successors, even without taking their other territories into the account, the most considerable princes in Italy, which had been long the theatre of contention to the great powers of Europe, and in which they had struggled with emulation to obtain the superiority. When the French, in conformity to the treaty of Chateau-Cambresis, withdrew their forces out of Italy, and finally relinquished all their schemes of conquest on that side of the Alps, the Spanish dominions there rose in importance, and enabled their kings, as long as the monarchy retained any degree of vigour, to preserve the chief sway in all the transactions of that country. But whatever accession, either of interior authority or of foreign dominion, Charles gained for the monarchs of Spain in Europe, was inconsiderable when compared with his acquisitions in the new world. He added there, not provinces, but empires to his crown. He conquered territories of such immense extent; he discovered such inexhaustible veins of wealth, and opened such boundless prospects of every kind, as must have roused his successor, and have called him forth to action, though his ambition had been much less ardent than that of Philip, and must have rendered him not only enterprising but formidable.

Progress of the German branch of the house of Austria.

While the elder branch of the Austrian family rose to such preeminence in Spain, the younger, of which Ferdinand was the head, grew to be considerable in Ger-

many. The ancient hereditary dominions of the house of Austria in Germany, united to the kingdom of Hungary and Bohemia, which Ferdinand had acquired by marriage, formed a respectable power; and when the imperial dignity was added to these, Ferdinand possessed territories more extensive than had belonged to any prince, Charles the fifth excepted, who had been at the head of the empire during several ages. Fortunately for Europe, the disgust which Philip conceived on account of Ferdinand's refusing to relinquish the imperial crown in his favour, not only prevented for some time the separate members of the house of Austria from acting in concert, but occasioned between them a visible alienation and rivalship. By degrees, however, regard to the interest of their family extinguished this impolitical animosity. The confidence which was natural returned; the aggrandizing of the house of Austria became the common object of all their schemes; they gave and received assistance alternately towards the execution of them; and each derived consideration and importance from the other's success. A family so great and so aspiring, became the general object of jealousy and terrour. All the power as well as policy of Europe were exerted, during a century, in order to check and humble it. Nothing can give a more striking idea of the ascendant which it had acquired, than that after its vigour was spent with extraordinary exertions of its strength, after Spain was become only the shadow of a great name, and its monarchs were sunk into debility and dotage, the house of Austria still continued to be formidable. The nations of Europe had so often felt its superior power, and had been so constantly employed in guarding against it, that the dread of it became a kind of political habit, the influence of which remained when the causes, which had formed it, ceased to exist.

Acquisitions of the kings of

While the house of Austria went on with such success in enlarging its dominions, France made no con-

siderable acquisition of new territory. All its schemes of conquest in Italy had proved abortive; it had hitherto obtained no establishment of consequence in the new world; and after the continued and vigorous efforts of four successive reigns, the confines of the kingdom were much the same as Louis the eleventh had left them. But though France made not such large strides towards dominion as the house of Austria, it continued to advance by steps which were more secure, because they were gradual and less observed. The conquest of Calais put it out of the power of the English to invade France but at their utmost peril, and delivered the French from the dread of their ancient enemies, who, previous to that event, could, at any time, penetrate into the kingdom by that avenue, and, thereby, retard or defeat the execution of their best concerted enterprises against any foreign power. The important acquisition of Metz covered that part of their frontier which formerly was most feeble, and lay most exposed to insult. France, from the time of its obtaining these additional securities against external invasion, must be deemed the most powerful kingdom in Europe, and is more fortunately situated than any on the continent, either for conquest or defence. From the confines of Artois to the bottom of the Pyrenees, and from the British channel to the frontiers of Savoy and the coast of the Mediterranean, its territories lay compact and unmingled with those of any other power. Several of the considerable provinces, which had contracted a spirit of independence, by their having been long subject to the great vassals of the crown, who were often at variance or at war with their master, were now accustomed to recognise and to obey one sovereign. As they became members of the same monarchy, they assumed the sentiments of that body into which they were incorporated, and cooperated with zeal towards promoting its interest and honour. The power and influence wrested from the nobles were

France during the reign of Charles the fifth,

seized by the crown. The people were not admitted to share in these spoils; they gained no new privilege; they acquired no additional weight in the legislature. It was not for the sake of the people, but in order to extend their own prerogative, that the monarchs of France had laboured to humble their great vassals. Satisfied with having brought them under entire subjection to the crown, they discovered no solicitude to free the people from their ancient dependence on the nobles of whom they held, and by whom they were often oppressed.

enable them to assume an higher station among the powers of Europe.

A monarch, at the head of a kingdom thus united at home, and secure from abroad, was entitled to form great designs, because he felt himself in a condition to execute them. The foreign wars, which had continued with little interruption from the accession of Charles the eighth, had not only cherished and augmented the martial genius of the nation, but, by inuring the troops, during the course of long service, to the fatigues of war, and accustoming them to obedience, had added the force of discipline to their natural ardour. A gallant and active body of nobles, who considered themselves as idle and useless, unless when they were in the field; who were hardly acquainted with any pastime or exercise but what was military; and who knew no road to power, or fame, or wealth, but war, would not have suffered their sovereign to remain long in inaction. The people, little acquainted with the arts of peace, and always ready to take arms at the command of their superiors, were accustomed, by the expense of long wars, carried on in distant countries, to bear impositions, which, however inconsiderable they may seem if estimated by the exorbitant rate of modern exactions, appear immense when compared with the sums levied in France, or in any other country of Europe, previous to the reign of Louis the eleventh. As all the members of which the state was composed were thus impatient for action, and capable

of great efforts, the schemes and operations of France must have been no less formidable to Europe than those of Spain. The superior advantages of its situation, the contiguity and compactness of its territories, together with the peculiar state of its political constitution at that juncture, must have rendered its enterprises still more alarming and more decisive. The king possessed such a degree of power as gave him the entire command of his subjects; the people were strangers to those occupations and habits of life which render men averse to war, or unfit for it; and the nobles, though reduced to the subordination necessary in a regular government, still retained the high undaunted spirit which was the effect of their ancient independence. The vigour of the feudal times remained, their anarchy was at an end; and the kings of France could avail themselves of the martial ardour which that singular institution had kindled or kept alive, without being exposed to the dangers or inconveniencies which are inseparable from it when in entire force.

Circumstances which prevented the immediate effects of their power.

A kingdom in such a state is, perhaps, capable of greater military efforts than at any other period in its progress. But how formidable or how fatal soever to the other nations of Europe the power of such a monarchy might have been, the civil wars which broke out in France saved them at that juncture from feeling its effects. These wars, of which religion was the pretext and ambition the cause, wherein great abilities were displayed by the leaders of the different factions, and little conduct or firmness was manifested by the crown under a succession of weak princes, kept France occupied and embroiled for half a century. During these commotions the internal strength of the kingdom was much wasted, and such a spirit of anarchy was spread among the nobles, to whom rebellion was familiar, and the restraint of laws unknown, that a considerable interval became requisite, not only for recruiting the internal vigour of the nation, but for

reestablishing the authority of the prince; so that it was long before France could turn her whole attention towards foreign transactions, or act with her proper force in foreign wars. It was long before she rose to that ascendant in Europe which she has maintained since the administration of cardinal Richelieu, and which the situation as well as extent of the kingdom, the nature of her government, together with the character of her people, entitle her to maintain.

Progress of England with respect to its interior state;

While the kingdoms on the continent grew into power and consequence, England likewise made considerable progress towards regular government and interior strength. Henry the eighth, probably without intention, and certainly without any consistent plan, of which his nature was incapable, pursued the scheme of depressing the nobility, which the policy of his father, Henry the seventh, had begun. The pride and caprice of his temper led him to employ chiefly new men in the administration of affairs, because he found them most obsequious, or least scrupulous; and he not only conferred on them such plenitude of power, but exalted them to such preeminence in dignity, as mortified and degraded the ancient nobility. By the alienation or sale of the church lands, which were dissipated with a profusion not inferior to the rapaciousness with which they had been seized, as well as by the privilege granted to the ancient landholders of selling their estates, or disposing of them by will, an immense property, formerly locked up, was brought into circulation. This put the spirit of industry and commerce in motion, and gave it some considerable degree of vigour. The road to power and to opulence became open to persons of every condition. A sudden and excessive flow of wealth from the West Indies proved fatal to industry in Spain; a moderate accession in England to the sum in circulation gave life to commerce, awakened the ingenuity of the nation, and excited it to useful enterprise. In France, what the nobles lost, the crown

gained. In England, the commons were gainers as well as the king. Power and influence accompanied, of course, the property which they acquired. They rose to consideration among their fellow-subjects; they began to feel their own importance; and, extending their influence in the legislative body gradually, and often when neither they themselves nor others foresaw all the effects of their claims and pretensions, they at last attained that high authority, to which the British constitution is indebted for the existence, and must owe the preservation, of its liberty. At the same time that the English constitution advanced towards perfection, several circumstances brought on a change in the ancient system with respect to foreign powers, and introduced another more beneficial to the nation. As soon as Henry disclaimed the supremacy of the papal see, and broke off all connexion with the papal court, considerable sums were saved to the nation, of which it had been annually drained by remittances to Rome for dispensations and indulgences, by the expense of pilgrimages into foreign countries[f], or by payment of annates, first-fruits, and a thousand other taxes which that artful and rapacious court levied on the credulity of mankind. The exercise of a jurisdiction different from that of the civil power, and claiming not only to be independent of it, but superior to it, a wild solecism in government, apt not only to perplex and disquiet weak minds, but tending directly to disturb society, was finally abolished. Government became more simple as well as more respectable, when no rank or character exempted any person from being amenable to the same courts as other subjects, from

[f] The loss which the nation sustained by most of these articles is obvious, and must have been great. Even that by pilgrimages was not inconsiderable. In the year 1428, license was obtained by no fewer than 916 persons to visit the shrine of St. James of Compostella in Spain. Rymer, vol. x. p. . In 1434, the number of pilgrims to the same place was 2460. Ibid. p. . In 1445, they were 2100, vol. xi. p. .

being tried by the same judges, and from being acquitted or condemned by the same laws.

with respect to the affairs of the continent;

By the loss of Calais the English were excluded from the continent. All schemes for invading France became, of course, as chimerical as they had formerly been pernicious. The views of the English were confined, first by necessity, and afterwards from choice, within their own island. That rage for conquest which had possessed the nation during many centuries, and wasted its strength in perpetual and fruitless wars, ceased at length. Those active spirits which had known and followed no profession but war, sought for occupation in the arts of peace, and their country was benefited as much by the one as it had suffered by the other. The nation, which had been exhausted by frequent expeditions to the continent, recruited its numbers, and acquired new strength; and when roused by any extraordinary exigency to take part in foreign operations, the vigour of its efforts was proportionally great, because they were only occasional, and of short continuance.

with respect to Scotland.

The same principle which had led England to adopt this new system with regard to the powers on the continent, occasioned a change in its plan of conduct with respect to Scotland, the only foreign state with which, on account of its situation in the same island, the English had such a close connexion as demanded their perpetual attention. Instead of prosecuting the ancient scheme of conquering that kingdom, which the nature of the country, defended by a brave and hardy people, rendered dangerous, if not impracticable; it appeared more eligible to endeavour at obtaining such influence in Scotland as might exempt England from any danger or disquiet from that quarter. The national poverty of the Scots, together with the violence and animosity of their factions, rendered the execution of this plan easy to a people far superior to them in wealth. The leading men of greatest power and po-

pularity were gained; the ministers and favourites of the crown were corrupted; and such absolute direction of the Scottish councils was acquired, as rendered the operations of the one kingdom dependent, in a great measure, on the sovereign of the other. Such perfect external security, added to the interior advantages which England now possessed, must soon have raised it to new consideration and importance; the long reign of Elizabeth, equally conspicuous for wisdom, for steadiness, and for vigour, accelerated its progress, and carried it with greater rapidity towards that elevated station which it hath since held among the powers of Europe.

Changes in the political state of the secondary powers in Europe.

During the period in which the political state of the great kingdoms underwent such changes, revolutions of considerable importance happened in that of the secondary or inferior powers. Those in the papal court are most obvious, and of most extensive consequence.

The most considerable revolution of the sixteenth century in the court of Rome.

In the preliminary book, I have mentioned the rise of that spiritual jurisdiction, which the popes claim as vicars of Jesus Christ, and have traced the progress of that authority which they possess as temporal princes[g]. Previous to the reign of Charles the fifth, there was nothing that tended to circumscribe or to moderate their authority, but science and philosophy, which began to revive and to be cultivated. The progress of these, however, was still inconsiderable; they always operate slowly; and it is long before their influence reaches the people, or can produce any sensible effect upon them. They may, perhaps, gradually, and in a long course of years, undermine and shake an established system of false religion, but there is no instance of their having overturned one. The battery is too feeble to demolish those fabrics which superstition raises on deep foundations, and can strengthen with the most consummate art.

[g] Vol. iii. p. 112 of this edition of Dr. Robertson's works.

The general revolt against the doctrines of the church of Rome, and the power of the popes.

Luther had attacked the papal supremacy with other weapons, and with an impetuosity more formidable. The time and manner of his attack concurred with a multitude of circumstances, which have been explained, in giving him immediate success. The charm which had bound mankind for so many ages was broken at once. The human mind, which had continued long as tame and passive, as if it had been formed to believe whatever was taught, and to bear whatever was imposed, roused of a sudden, and became inquisitive, mutinous, and disdainful of the yoke to which it had hitherto submitted. That wonderful ferment and agitation of mind, which, at this distance of time, appears unaccountable, or is condemned as extravagant, was so general, that it must have been excited by causes which were natural, and of powerful efficacy. The kingdoms of Denmark, Sweden, England, and Scotland, and almost one half of Germany, threw off their allegiance to the pope; abolished his jurisdiction within their territories; and gave the sanction of law to modes of discipline and systems of doctrine, which were not only independent of his power, but hostile to it. Nor was this spirit of innovation confined to those countries which openly revolted from the pope; it spread through all Europe, and broke out in every part of it with various degrees of violence. It penetrated early into France, and made a quick progress there. In that kingdom the number of converts to the opinions of the reformers was so great, their zeal so enterprising, and the abilities of their leaders so distinguished, that they soon ventured to contend for superiority with the established church, and were sometimes on the point of obtaining it. In all the provinces of Germany which continued to acknowledge the papal supremacy, as well as in the Low Countries, the protestant doctrines were secretly taught, and had gained so many proselytes, that they were ripe for revolt, and were restrained merely by the

dread of their rulers from imitating the example of their neighbours, and asserting their independence. Even in Spain and in Italy, symptoms of the same disposition to shake off the yoke appeared. The pretensions of the pope to infallible knowledge and supreme power were treated by many persons of eminent learning and abilities with such scorn, or attacked with such vehemence, that the most vigilant attention of the civil magistrate, the highest strains of pontifical authority, and all the rigour of inquisitorial jurisdiction, were requisite to check and extinguish it.

This abridged the extent of the popes' dominions,

The defection of so many opulent and powerful kingdoms from the papal see, was a fatal blow to its grandeur and power. It abridged the dominions of the popes in extent; it diminished their revenues, and left them fewer rewards to bestow on the ecclesiastics of various denominations, attached to them by vows of obedience as well as by ties of interest, and whom they employed as instruments to establish or support their usurpations in every part of Europe. The countries, too, which now disclaimed their authority, were those which formerly had been most devoted to it. The empire of superstition differs from every other species of dominion; its power is often greatest, and most implicitly obeyed, in the provinces most remote from the seat of government; while such as are situated nearer to that, are more apt to discern the artifices by which it is upheld, or the impostures on which it is founded. The personal frailties or vices of the popes, the errours as well as corruption of their administration, the ambition, venality, and deceit which reigned in their courts, fell immediately under the observation of the Italians, and could not fail of diminishing that respect which begets submission. But in Germany, England, and the more remote parts of Europe, these were either altogether unknown, or, being only known by report, made a slighter impression. Veneration for the papal dignity increased accordingly in these coun-

tries in proportion to their distance from Rome; and that veneration, added to their gross ignorance, rendered them equally credulous and passive. In tracing the progress of the papal domination, the boldest and most successful instances of encroachment are to be found in Germany and other countries distant from Italy. In these its impositions were heaviest, and its exactions the most rapacious; so that in estimating the diminution of power which the court of Rome suffered in consequence of the reformation, not only the number but the character of the people who revolted, not only the great extent of territory, but the extraordinary obsequiousness of the subjects which it lost, must be taken into the account.

and obliged them to change the spirit of their government.

Nor was it only by this defection of so many kingdoms and states which the reformation occasioned, that it contributed to diminish the power of the Roman pontiffs. It obliged them to adopt a different system of conduct towards the nations which still continued to recognise their jurisdiction, and to govern them by new maxims and with a milder spirit. The reformation taught them, by a fatal example, what they seem not before to have apprehended, that the credulity and patience of mankind might be overburthened and exhausted. They became afraid of venturing upon any such exertion of their authority as might alarm or exasperate their subjects, and excite them to a new revolt. They saw a rival church established in many countries of Europe, the members of which were on the watch to observe any errours in their administration, and eager to expose them. They were sensible that the opinions, adverse to their power and usurpations, were not adopted by their enemies alone, but had spread even among the people who still adhered to them. Upon all these accounts, it was no longer possible to lead or to govern their flock in the same manner as in those dark and quiet ages, when faith was implicit, when submission was unreserved,

and all tamely followed and obeyed the voice of their pastor. From the æra of the reformation, the popes have ruled rather by address and management than by authority. Though the style of their decrees be still the same, the effect of them is very different. Those bulls and interdicts, which, before the reformation, made the greatest princes tremble, have, since that period, been disregarded or despised by the most inconsiderable. Those bold decisions and acts of jurisdiction which, during many ages, not only passed uncensured, but were revered as the awards of a sacred tribunal, would, since Luther's appearance, be treated by one part of Europe as the effect of folly or arrogance, and be detested by the other as impious and unjust. The popes, in their administration, have been obliged not only to accommodate themselves to the notions of their adherents, but to pay some regard to the prejudices of their enemies. They seldom venture to claim new powers, or even to insist obstinately on their ancient prerogatives, lest they should irritate the former; they carefully avoid every measure that may either excite the indignation, or draw on them the derision of the latter. The policy of the court of Rome has become as cautious, circumspect, and timid, as it was once adventurous and violent; and though their pretensions to infallibility, on which all their authority is founded, does not allow them to renounce any jurisdiction which they have at any time claimed or exercised, they find it expedient to suffer many of their prerogatives to lie dormant, and not to expose themselves to the risk of losing that remainder of power which they still enjoy, by ill-timed attempts towards reviving obsolete pretensions. Before the sixteenth century, the popes were the movers and directors in every considerable enterprise; they were at the head of every great alliance; and being considered as arbiters in the affairs of christendom, the court of Rome was the centre of political negotiation and intrigue. Since that

time, the greatest operations in Europe have been carried on independent of them; they have sunk almost to a level with the other petty princes of Italy; they continue to claim, though they dare not exercise, the same spiritual jurisdiction, but hardly retain any shadow of the temporal power which they anciently possessed.

The reformation contributed to improve the church both in science and morals.

But how fatal soever the reformation may have been to the power of the popes, it has contributed to improve the church of Rome both in science and in morals. The desire of equalling the reformers in those talents which had procured them respect; the necessity of acquiring the knowledge requisite for defending their own tenets, or refuting the arguments of their opponents, together with the emulation natural between two rival churches, engaged the Roman catholic clergy to apply themselves to the study of useful science, which they cultivated with such assiduity and success, that they have gradually become as eminent in literature, as they were in some periods infamous for ignorance. The same principle occasioned a change no less considerable in the morals of the Romish clergy. Various causes which have formerly been enumerated, had concurred in introducing great irregularity, and even dissolution of manners, among the popish clergy. Luther and his adherents began their attack on the church with such vehement invectives against these, that, in order to remove the scandal, and silence their declamations, greater decency of conduct became necessary. The reformers themselves were so eminent not only for the purity but even austerity of their manners, and had acquired such reputation among the people on that account, that the Roman catholic clergy must have soon lost all credit, if they had not endeavoured to conform in some measure to their standard. They knew that all their actions fell under the severe inspection of the protestants, whom enmity and emulation prompted to ob-

serve every vice, or even impropriety in their conduct, to censure them without indulgence, and to expose them without mercy. This rendered them, of course, not only cautious to avoid such enormities as might give offence, but studious to acquire the virtues which might merit praise. In Spain and Portugal, where the tyrannical jurisdiction of the inquisition crushed the protestant faith as soon as it appeared, the spirit of popery continues invariable; science has made small progress, and the character of ecclesiastics has undergone little change. But in those countries where the members of the two churches have mingled freely with each other, or have carried on any considerable intercourse, either commercial or literary, an extraordinary alteration in the ideas, as well as in the morals, of the popish ecclesiastics, is manifest. In France, the manners of the dignitaries and secular clergy have become decent and exemplary in an high degree. Many of them have been distinguished for all the accomplishments and virtues which can adorn their profession; and differ greatly from their predecessors before the reformation, both in their maxims and in their conduct.

The effects of it extend to the character of the popes themselves.

Nor has the influence of the reformation been felt only by the inferior members of the Roman catholic church; it has extended to the see of Rome, to the sovereign pontiffs themselves. Violations of decorum, and even trespasses against morality, which passed without censure in those ages, when neither the power of the popes, nor the veneration of the people for their character, had any bounds; when there was no hostile eye to observe the errours in their conduct, and no adversaries zealous to inveigh against them; would be liable now to the severest animadversion, and excite general indignation or horrour. Instead of rivalling the courts of temporal princes in gaiety, and surpassing them in licentiousness, the popes have studied to assume manners more severe and more suitable to their

ecclesiastical character. The chair of St. Peter hath not been polluted, during two centuries, by any pontiff that resembled Alexander the sixth, or several of his predecessors, who were a disgrace to religion and to human nature. Throughout this long succession of popes, a wonderful decorum of conduct, compared with that of preceding ages, is observable. Many of them, especially among the pontiffs of the present century, have been conspicuous for all the virtues becoming their high station; and by their humanity, their love of literature, and their moderation, have made some atonement to mankind for the crimes of their predecessors. Thus the beneficial influences of the reformation have been more extensive than they appear on a superficial view; and this great division in the christian church hath contributed, in some measure, to increase purity of manners, to diffuse science, and to inspire humanity. History recites such a number of shocking events, occasioned by religious dissensions, that it must afford peculiar satisfaction to trace any one salutary or beneficial effect to that source, from which so many fatal calamities have flowed.

State of the republic of Venice;

The republic of Venice, which at the beginning of the sixteenth century, had appeared so formidable, that almost all the potentates of Europe united in a confederacy for its destruction, declined gradually from its ancient power and splendour. The Venetians not only lost a great part of their territory in the war excited by the league of Cambray, but the revenues as well as vigour of the state were exhausted by their extraordinary and long-continued efforts in their own defence; and that commerce by which they had acquired their wealth and power began to decay, without any hopes of its reviving. All the fatal consequences to their republic, which the sagacity of the Venetian senate foresaw, on the first discovery of a passage to the East Indies by the cape of Good Hope, actually took place. Their endeavours to prevent the Portu-

guese from establishing themselves in the East Indies, not only by exciting the soldans of Egypt, and the Ottoman monarchs, to turn their arms against such dangerous intruders, but by affording secret aid to the infidels in order to insure their success[h], proved ineffectual. The activity and valour of the Portuguese surmounted every obstacle, and obtained such a firm footing in that fertile country as secured to them large possessions, together with an influence still more extensive. Lisbon, instead of Venice, became the staple for the precious commodities of the east. The Venetians, after having possessed for many years the monopoly of that beneficial commerce, had the mortification to be excluded from almost any share in it. The discoveries of the Spaniards, in the western world, proved no less fatal to inferior branches of their commerce. The original defects which were formerly pointed out in the constitution of the Venetian republic still continued, and the disadvantages with which it undertook any great enterprise increased rather than diminished. The sources from which it derived its extraordinary riches and power being dried up, the interior vigour of the state declined, and, of course, its external operations became less formidable. Long before the middle of the sixteenth century, Venice ceased to be one of the principal powers in Europe, and dwindled into a secondary and subaltern state. But as the senate had the address to conceal the diminution of its power, under the veil of moderation and caution; as it made no rash effort that could discover its weakness; as the symptoms of political decay in states are not soon observed, and are seldom so apparent to their neighbours as to occasion any sudden alteration in their conduct towards them, Venice continued long to be considered and respected. She was treated not according to her present condition, but according to the

[h] Freher. Script. Rer. German. vol. ii. 529.

rank which she had formerly held. Charles the fifth, as well as the kings of France, his rivals, courted her assistance with emulation and solicitude in all their enterprises. Even down to the close of the century, Venice remained not only an object of attention, but a considerable seat of political negotiation and intrigue.

of Tuscany; That authority which the first Cosmo de' Medici, and Lawrence, his grandson, had acquired in the republic of Florence, by their beneficence and abilities, inspired their descendants with the ambition of usurping the sovereignty in their country, and paved their

A. D. 1530. way towards it. Charles the fifth placed Alexander de' Medici at the head of the republic, and to the natural interest and power of the family added the weight as well as credit of the imperial protection. Of these, his successor Cosmo, surnamed the great, availed himself; and establishing his supreme authority on the ruins of the ancient republican constitution, he transmitted that, together with the title of grand duke of Tuscany, to his descendants. Their dominions were composed of the territories which had belonged to the three commonwealths of Florence, Pisa, and Siena, and formed one of the most respectable of the Italian states.

of the dukes of Savoy; The dukes of Savoy, during the former part of the sixteenth century, possessed territories which were not considerable either for extent or value; and the French, having seized the greater part of them, obliged the reigning duke to retire for safety to the strong fortress of Nice, where he shut himself up for several years, while his son, the prince of Piedmont, endeavoured to better his fortune, by serving as an adventurer in the armies of Spain. The peace of Chateau-Cambresis restored to him his paternal dominions. As these are environed on every hand by powerful neighbours, all whose motions the dukes of Savoy must observe with the greatest attention, in order not only to guard against the danger of being surprised and

overpowered, but that they may choose their side with discernment in those quarrels wherein it is impossible for them to avoid taking part, this peculiarity of their situation seems to have had no inconsiderable influence on their character. By rousing them to perpetual attention, by keeping their ingenuity always on the stretch, and engaging them in almost continual action, it hath formed a race of princes more sagacious in discovering their true interests, more decisive in their resolutions, and more dexterous in availing themselves of every occurrence which presented itself, than any, perhaps, that can be singled out in the history of Europe. By gradual acquisitions the dukes of Savoy have added to their territories, as well as to their own importance; and aspiring at length to regal dignity, which they obtained about half a century ago, by the title of kings of Sardinia, they hold now no inconsiderable rank among the monarchs of Europe.

of the United Provinces;

The territories which form the republic of the United Netherlands, were lost during the first part of the sixteenth century, among the numerous provinces subject to the house of Austria; and were then so inconsiderable, that hardly one opportunity of mentioning them hath occurred in all the busy period of this history. But soon after the peace of Chateau-Cambresis, the violent and bigoted maxims of Philip's government, being carried into execution with unrelenting rigour by the duke of Alva, exasperated the people of the Low Countries to such a degree, that they threw off the Spanish yoke, and asserted their ancient liberties and laws. These they defended with a persevering valour, which gave employment to the arms of Spain during half a century, exhausted the vigour, ruined the reputation of that monarchy, and at last constrained their ancient masters to recognise and to treat with them as a free and independent state. This state, founded on liberty, and reared by industry and economy, grew into great reputation, even while strug-

gling for its existence. But when peace and security allowed it to enlarge its views, and to extend its commerce, it rose to be one of the most respectable as well as enterprising powers in Europe.

The transactions of the kingdoms in the north of Europe have been seldom attended to in the course of this history.

of Russia; Russia remained buried in that barbarism and obscurity, from which it was called about the beginning of the present century, by the creative genius of Peter the great, who made his country known and formidable to the rest of Europe.

of Denmark and Sweden. In Denmark and Sweden, during the reign of Charles the fifth, great revolutions happened in their constitutions, civil as well as ecclesiastical. In the former kingdom, a tyrant being degraded from the throne, and expelled the country, a new prince was called by the voice of the people to assume the reins of government. In the latter, a fierce people, roused to arms by injuries and oppression, shook off the Danish yoke, and conferred the regal dignity on its deliverer, Gustavus Ericson, who had all the virtues of a hero and of a patriot. Denmark, exhausted by foreign wars, or weakened by the dissensions between the king and the nobles, became incapable of such efforts as were requisite in order to recover the ascendant which it had long possessed in the north of Europe. Sweden, as soon as it was freed from the dominion of strangers, began to recruit its strength, and acquired in a short time such internal vigour, that it became the first kingdom in the north. Early in the subsequent century, it rose to such an high rank among the powers of Europe, that it had the chief merit in forming, as well as conducting, that powerful league, which protected not only the protestant religion, but the liberties of Germany, against the bigotry and ambition of the house of Austria.

PROOFS

AND

ILLUSTRATIONS

OF THE VIEW OF THE PROGRESS OF SOCIETY IN EUROPE, FROM THE SUBVERSION OF THE ROMAN EMPIRE, TO THE BEGINNING OF THE SIXTEENTH CENTURY.

PROOFS

AND

ILLUSTRATIONS.

Note I. Sect. I. p. 3,* a.

THE consternation of the Britons, when invaded by the Picts and Caledonians, after the Roman legions were called out of the island, may give some idea of the degree of debasement to which the human mind was reduced by long servitude under the Romans. In their supplicatory letter to Ætius, which they call the Groans of Britain, "We know not," say they, "which way to turn us. The barbarians drive us to the sea; and the sea forces us back on the barbarians; between which we have only the choice of two deaths, either to be swallowed up by the waves, or to be slain by the sword." Histor. Gildæ, ap. Gale, Hist. Britan. Script. p. 6. One can hardly believe this dastardly race to be the descendants of that gallant people, who repulsed Cæsar, and defended their liberty so long against the Roman arms.

Note II. Sect. I. p. 3, b.

The barbarous nations were not only illiterate, but regarded literature with contempt. They found the inhabitants of all the provinces of the empire sunk in effeminacy, and averse to war. Such a character was the object of scorn to an high-spirited and gallant race of men. "When we would brand an enemy," says Luitprandus, "with the most disgraceful and contu-

* The figures refer to the page in the third volume of this edition of Dr. Robertson's works.

melious appellation, we call him a Roman; hoc solo, id est Romani nomine, quicquid ignobilitatis, quicquid timiditatis, quicquid avaritiæ, quicquid luxuriæ, quicquid mendacii, immo quicquid vitiorum est comprehendentes." Luitprandi Legatio, ap. Murat. Scriptor. Italic. vol. ii. pars i. p. 481. This degeneracy of manners, illiterate barbarians imputed to their love of learning. Even after they settled in the countries which they had conquered, they would not permit their children to be instructed in any science; "for," said they, "instruction in the sciences tends to corrupt, enervate, and depress the mind; and he who has been accustomed to tremble under the rod of a pedagogue, will never look on a sword or spear with an undaunted eye." Procop. de Bello Gothor. lib. i. p. 4, ap. Script. Byz. edit. Venet. vol. 1. A considerable number of years elapsed, before nations so rude, and so unwilling to learn, could produce historians capable of recording their transactions, or of describing their manners and institutions. By that time, the memory of their ancient condition was, in a great measure, lost, and few monuments remained to guide their first writers to any certain knowledge of it. If one expects to receive any satisfactory account of the manners and laws of the Goths, Lombards, or Franks, during their residence in those countries where they were originally seated, from Jornandes, Paulus Warnefridus, or Gregory of Tours, the earliest and most authentic historians of these people, he will be miserably disappointed. Whatever imperfect knowledge has been conveyed to us of their ancient state, we owe not to their own writers, but to the Greek and Roman historians.

Note III. Sect. I. p. 4, c.

A circumstance related by Priscus, in his history of the embassy to Attila, king of the Huns, gives a striking view of the enthusiastic passion for war, which prevailed among the barbarous nations. When the enter-

tainment, to which that fierce conqueror admitted the Roman ambassadors, was ended, two Scythians advanced towards Attila, and recited a poem, in which they celebrated his victories and military virtues. All the Huns fixed their eyes with attention on the bards. Some seemed to be delighted with the verses; others, remembering their own battles and exploits, exulted with joy; while such as were become feeble through age, burst out into tears, bewailing the decay of their vigour, and the state of inactivity in which they were now obliged to remain. Excerpta ex Historia Prisci Rhetoris, ap. Byz. Hist. Script. vol. i. p. 45.

Note IV. Sect. I. p. 10, e.

A remarkable confirmation of both parts of this reasoning occurs in the history of England. The Saxons carried on the conquest of that country with the same destructive spirit which distinguished the other barbarous nations. The ancient inhabitants of Britain were either exterminated, or forced to take shelter among the mountains of Wales, or reduced to servitude. The Saxon government, laws, manners, and language, were, of consequence, introduced into Britain, and were so perfectly established, that all memory of the institutions previous to their conquest of the country was, in a great measure, lost. The very reverse of this happened in a subsequent revolution. A single victory placed William the Norman on the throne of England. The Saxon inhabitants, though oppressed, were not exterminated. William employed the utmost efforts of his power and policy to make his new subjects conform in every thing to the Norman standard, but without success. The Saxons, though vanquished, were far more numerous than their conquerors; when the two races began to incorporate, the Saxon laws and manners gradually gained ground. The Norman institutions became unpopular and odious; many of them fell into disuse; and in the English constitution

and language, at this day, many essential parts are manifestly of Saxon, not of Norman extraction.

Note V. Sect. I. p. 10, f.

Procopius, the historian, declines, from a principle of benevolence, to give any particular detail of the cruelties of the Goths; "lest," says he, "I should transmit a monument and example of inhumanity to succeeding ages." Procop. de Bello Goth. lib. iii. cap. 10, ap. Byz. Script. vol. i. p. 126. But as the change, which I have pointed out as a consequence of the settlement of the barbarous nations in the countries formerly subject to the Roman empire, could not have taken place if the greater part of the ancient inhabitants had not been extirpated, an event of such importance and influence merits a more particular illustration. This will justify me for exhibiting some part of that melancholy spectacle, over which humanity prompted Procopius to draw a veil. I shall not, however, disgust my readers by a minute narration; but rest satisfied with collecting some instances of the devastations made by two of the many nations, which settled in the empire. The Vandals were the first of the barbarians who invaded Spain. It was one of the richest and most populous of the Roman provinces; the inhabitants had been distinguished for courage, and had defended their liberty against the arms of Rome, with greater obstinacy, and during a longer course of years, than any nation in Europe. But so entirely were they enervated by their subjection to the Romans, that the Vandals, who entered the kingdom a. d. 409, completed the conquest of it with such rapidity, that, in the year 411, these barbarians divided it among them by casting lots. The desolation occasioned by their invasion is thus described by Idatius, an eyewitness: "The barbarians wasted every thing with hostile cruelty. The pestilence was no less destructive. A dreadful famine raged, to such

a degree, that the living were constrained to feed on the dead bodies of their fellow-citizens; and all these terrible plagues desolated at once the unhappy kingdoms." Idatii Chron. ap. Biblioth. Patrum, vol. vii. p. 1233. edit. Lugd. 1677. The Goths having attacked the Vandals in their new settlements, a fierce war ensued; the country was plundered by both parties; the cities which had escaped from destruction, in the first invasion of the Vandals, were now laid in ashes, and the inhabitants exposed to suffer every thing that the wanton cruelty of barbarians could inflict. Idatius describes these scenes of inhumanity, ibid. p. 1235, b. 1236, c, f. A similar account of their devastations is given by Isidorus Hispalensis, and other contemporary writers. Isid. Chron. ap. Grot. Hist. Goth. 732. From Spain the Vandals passed over into Africa, a. d. 428. Africa was, next to Egypt, the most fertile of the Roman provinces. It was one of the granaries of the empire, and is called, by an ancient writer, the soul of the commonwealth. Though the army, with which the Vandals invaded it, did not exceed 30,000 fighting men, they became absolute masters of the province in less than two years. A contemporary author gives a dreadful account of the havoc which they made: "They found a province well cultivated, and enjoying plenty, the beauty of the whole earth. They carried their destructive arms into every corner of it; they dispeopled it by their devastations, exterminating every thing with fire and sword. They did not even spare the vines and fruit-trees, that those, to whom caves and inaccessible mountains had afforded a retreat, might find no nourishment of any kind. Their hostile rage could not be satiated, and there was no place exempted from the effects of it. They tortured their prisoners with the most exquisite cruelty, that they might force from them a discovery of their hidden treasures. The more they discovered, the more they expected, and the more implacable they became.

Neither the infirmities of age nor of sex; neither the dignity of nobility, nor the sanctity of the sacerdotal office, could mitigate their fury; but the more illustrious their prisoners were, the more barbarously they insulted them. The public buildings, which resisted the violence of the flames, they levelled with the ground. They left many cities without an inhabitant. When they approached any fortified place which their undisciplined army could not reduce, they gathered together a multitude of prisoners, and, putting them to the sword, left their bodies unburied, that the stench of the carcasses might oblige the garrison to abandon it." Victor Vitensis de Persecutione Africana, ap. Bibl. Patrum, vol. viii. p. 666. St. Augustin, an African, who survived the conquest of his country by the Vandals some years, gives a similar description of their cruelties, Opera, vol. x. p. 372. edit. 1616. About an hundred years after the settlement of the Vandals in Africa, Belisarius attacked and dispossessed them. Procopius, a contemporary historian, describes the devastation which that war occasioned. "Africa," says he, "was so entirely dispeopled, that one might travel several days in it without meeting one man; and it is no exaggeration to say, that in the course of the war five millions of persons perished." Procop. Hist. Arcana, cap. 18, ap. Byz. Script. vol. i. p. 315.

I have dwelt longer upon the calamities of this province, because they are described not only by contemporary authors, but by eyewitnesses. The present state of Africa confirms their testimony. Many of the most flourishing and populous cities with which it was filled, were so entirely ruined, that no vestiges remain to point out where they were situated. That fertile territory, which sustained the Roman empire, still lies in a great measure uncultivated; and that province which Victor, in his barbarous Latin, called 'speciositas totius terræ florentis,' is now the retreat of pirates and banditti.

While the Vandals laid waste a great part of the empire, the Huns desolated the remainder. Of all the barbarous tribes, they were the fiercest and most formidable. Ammianus Marcellinus, a contemporary author, and one of the best of the later historians, gives an account of their policy and manners, which nearly resemble those of the Scythians described by the ancients, and of the Tartars known to the moderns. Some parts of their character, and several of their customs, are not unlike those of the savages in North America. Their passion for war was extreme. "As in polished societies," says Ammianus, "ease and tranquillity are courted, they delight in war and dangers. He who falls in battle is reckoned happy. They who die of old age or of disease are deemed infamous. They boast, with the utmost exultation, of the number of enemies whom they have slain, and, as the most glorious of all ornaments, they fasten the scalps of those who have fallen by their hands to the trappings of their horses." Ammian. Marc. lib. xxxi. p. 477. edit. Gronov. Lugd. 1693. Their incursions into the empire began in the fourth century; and the Romans, though no strangers, by that time, to the effects of barbarous rage, were astonished at the cruelty of their devastations. Thrace, Pannonia, and Illyricum, were the countries which they first laid desolate. As they had at first no intention of settling in Europe, they made only inroads of short continuance into the empire; but these were frequent; and Procopius computes that in each of these, at a medium, two hundred thousand persons perished, or were carried off as slaves. Procop. Hist. Arcan. ap. Byz. Script. vol. i. p. 316. Thrace, the best-cultivated province in that quarter of the empire, was converted into a desert; and when Priscus accompanied the ambassadors sent to Attila, there were no inhabitants in some of the cities, but a few miserable people who had taken shelter among the ruins of the churches; and the fields were covered with the bones

of those who had fallen by the sword. Priscus, ap. Byz. Script. vol. i. p. 34. Attila became king of the Huns, a. d. 434. He is one of the greatest and most enterprising conquerors mentioned in history. He extended his empire over all the vast countries, comprehended under the general names of Scythia and Germany in the ancient division of the world. While he was carrying on his wars against the barbarous nations, he kept the Roman empire under perpetual apprehensions, and extorted enormous subsidies from the timid and effeminate monarchs who governed it. In the year 451, he entered Gaul at the head of an army composed of all the various nations which he had subdued. It was more numerous than any with which the barbarians had hitherto invaded the empire. The devastations which he committed were horrible; not only the open country, but the most flourishing cities were desolated. The extent and cruelty of his devastations are described by Salvianus de Gubernat. Dei, edit. Baluz. Par. 1669, p. 139, etc. and by Idatius, ubi supra, p. 1235. Ætius put a stop to his progress in that country by the famous battle of Chalons, in which, if we may believe the historians of that age, three hundred thousand persons perished. Idat. ibid. Jornandes de Rebus Geticis, ap. Grot. Hist. Gothor. p. 671. Amst. 1665. But the next year he resolved to attack the centre of the empire, and marching into Italy, wasted it with rage, inflamed by the sense of his late disgrace. What Italy suffered by the Huns exceeded all the calamities which the preceding incursions of the barbarians had brought upon it. Conringius has collected several passages from the ancient historians, which prove that the devastations committed by the Vandals and Huns in the countries situated on the banks of the Rhine, were no less cruel and fatal to the human race. Exercitatio de Urbibus Germaniæ, Opera, vol. i. p. 488. It is endless, it is shocking, to follow these destroyers of mankind through so many

scenes of horrour, and to contemplate the havoc which they made of the human species.

But the state in which Italy appears to have been, during several ages, after the barbarous nations settled in it, is the most decisive proof of the cruelty as well as extent of their devastations. Whenever any country is thinly inhabited, trees and shrubs spring up in the uncultivated fields, and, spreading by degrees, form large forests; by the overflowing of rivers, and the stagnating of waters, other parts of it are converted into lakes and marshes. Ancient Italy, which the Romans rendered the seat of elegance and luxury, was cultivated to the highest pitch. But so effectually did the devastations of the barbarians destroy all the effects of Roman industry and cultivation, that, in the eighth century, a considerable part of Italy appears to have been covered with forests and marshes of great extent. Muratori enters into a minute detail concerning the situation and limits of several of these; and proves, by the most authentic evidence, that great tracts of territory, in all the different provinces of Italy, were either overrun with wood, or laid under water. Nor did these occupy parts of the country naturally barren or of little value, but were spread over districts, which ancient writers represent as extremely fertile, and which at present are highly cultivated. Muratori, Antiquitates Italicæ medii Ævi, dissert. xxi. v. ii. p. 149. 153, etc. A strong proof of this occurs in a description of the city of Modena, by an author of the tenth century. Murat. Script. Rerum Italic. vol. ii. pars ii. p. 691. The state of desolation in other countries of Europe seems to have been the same. In many of the most early charters now extant, the lands granted to monasteries, or to private persons, are distinguished into such as are cultivated or inhabited, and such as were 'eremi,' desolate. In many instances, lands are granted to persons because they had taken them from the desert, 'ab eremo,' and had

cultivated and planted them with inhabitants. This appears from a charter of Charlemagne, published by Eckhart, de Rebus Franciæ Orientalis, vol. ii. p. 864, and from many charters of his successors quoted by Du Cange, voc. Eremus. Wherever a right of property in land can be thus acquired, it is evident that the country must be extremely desolate, and thinly peopled. The first settlers in America obtained possession of land by such a title. Whoever was able to clear and to cultivate a field was recognised as the proprietor. His industry merited such a recompense. The grants in the charters which I have mentioned flow from a similar principle, and there must have been some resemblance in the state of the countries.

Muratori adds, that, during the eighth and ninth centuries, Italy was greatly infested by wolves and other wild beasts; another mark of its being destitute of inhabitants. Murat. Antiq. vol. ii. p. 163. Thus Italy, the pride of the ancient world for its fertility and cultivation, was reduced to the state of a country newly peopled and lately rendered habitable.

I am sensible, not only that some of these descriptions of the devastations which I have quoted, may be exaggerated, but that the barbarous tribes, in making their settlements, did not proceed invariably in the same manner. Some of them seemed to be bent on exterminating the ancient inhabitants; others were more disposed to incorporate with them. It is not my province either to inquire into the causes which occasioned this variety in the conduct of the conquerors, or to describe the state of those countries where the ancient inhabitants were treated most mildly. The facts which I have produced are sufficient to justify the account which I have given in the text, and to prove, that the destruction of the human species, occasioned by the hostile invasions of the northern nations, and their subsequent settlements, was much greater than many authors seem to imagine.

Note VI. Sect. I. p. 11, h.

I have observed, Note ii. that our only certain information concerning the ancient state of the barbarous nations must be derived from the Greek and Roman writers. Happily an account of the institutions and customs of one people, to which those of all the rest seem to have been, in a great measure, similar, has been transmitted to us by two authors, the most capable, perhaps, that ever wrote, of observing them with profound discernment, and of describing them with propriety and force. The reader must perceive that Cæsar and Tacitus are the authors whom I have in view. The former gives a short account of the ancient Germans in a few chapters of the sixth book of his Commentaries: the latter wrote a treatise expressly on that subject. These are the most precious and instructive monuments of antiquity to the present inhabitants of Europe. From them we learn:

I. That the state of society among the ancient Germans was of the rudest and most simple form. They subsisted entirely by hunting or by pasturage. Cæs. lib. vi. c. 21. They neglected agriculture, and lived chiefly on milk, cheese, and flesh; ibid. c. 22. Tacitus agrees with him in most of these points; De Morib. Germ. c. 14, 15. 23. The Goths were equally negligent of agriculture. Prisc. Rhet. ap. Byz. Script. v. i. p. 31. b. Society was in the same state among the Huns, who disdained to cultivate the earth, or to touch a plough. Amm. Marcel. lib. xxxi. p. 475. The same manners took place among the Alans; ibid. p. 477. While society remains in this simple state, men by uniting together scarcely relinquish any portion of their natural independence. Accordingly we are informed:

II. That the authority of civil government was extremely limited among the Germans. During times of

peace they had no common or fixed magistrate, but the chief men of every district dispensed justice, and accommodated differences. Cæsar. ibid. c. 23. Their kings had not absolute or unbounded power; their authority consisted rather in the privilege of advising, than in the power of commanding. Matters of small consequence were determined by the chief men; affairs of importance, by the whole community. Tacit. c. 7. 11. The Huns, in like manner, deliberated in common concerning every business of moment to the society, and were not subject to the rigour of regal authority. Amm. Marcel. lib. xxxi. p. 474.

III. Every individual among the ancient Germans was left at liberty to choose whether he would take part in any military enterprise which was proposed; there seems to have been no obligation to engage in it imposed on him by public authority. "When any of the chief men proposes an expedition, such as approve of the cause, and of the leader, rise up, and declare their intention of following him: after coming under this engagement, those who do not fulfil it are considered as deserters and traitors, and are looked upon as infamous." Cæs. ibid. c. 23. Tacitus plainly points at the same custom, though in terms more obscure. Tacit. c. 11.

IV. As every individual was so independent, and master, in so great a degree, of his own actions, it became, of consequence, the great object of every person among the Germans who aimed at being a leader, to gain adherents, and attach them to his person and interest. These adherents Cæsar calls 'ambacti' and 'clientes,' i. e. retainers or clients; Tacitus, 'comites,' or companions. The chief distinction and power of the leaders consisted in being attended by a numerous band of chosen youth. This was their pride as well as ornament during peace, and their defence in war. The leaders gained or preserved the favour of these

retainers by presents of armour and of horses; or by the profuse, though inelegant, hospitality, with which they entertained them. Tacit. c. 14, 15.

V. Another consequence of the personal liberty and independence which the Germans retained, even after they united in society, was their circumscribing the criminal jurisdiction of the magistrate within very narrow limits, and their not only claiming but exercising almost all the rights of private resentment and revenge. Their magistrates had not the power either of imprisoning, or of inflicting any corporeal punishment on a free man. Tacit. c. 7. Every person was obliged to avenge the wrongs which his parents or friends had sustained. Their enmities were hereditary, but not irreconcilable. Even murder was compensated by paying a certain number of cattle. Tacit. c. 21. A part of the fine went to the king, or state, a part to the person who had been injured, or to his kindred; ibid. c. 12.

Those particulars concerning the institutions and manners of the Germans, though well known to every person conversant in ancient literature, I have thought proper to arrange in this order, and to lay before such of my readers as may be less acquainted with these facts, both because they confirm the account which I have given of the state of the barbarous nations, and because they tend to illustrate all the observations I shall have occasion to make concerning the various changes in their government and customs. The laws and customs introduced by the barbarous nations into their new settlements, are the best commentary on the writings of Cæsar and Tacitus; and their observations are the best key to a perfect knowledge of these laws and customs.

One circumstance, with respect to the testimonies of Cæsar and Tacitus, concerning the Germans, merits attention. Cæsar wrote his brief account of their

manners more than an hundred years before Tacitus composed his treatise De Moribus Germanorum. An hundred years make a considerable period in the progress of national manners, especially if, during that time, those people who are rude and unpolished have had much communication with more civilized states. This was the case with the Germans. Their intercourse with the Romans began when Cæsar crossed the Rhine, and increased greatly during the interval between that event and the time when Tacitus flourished. We may accordingly observe, that the manners of the Germans, in his time, which Cæsar describes, were less improved than those of the same people as delineated by Tacitus. Besides this, it is remarkable that there was a considerable difference in the state of society among the different tribes of Germans. The Suiones were so much improved, that they began to be corrupted. Tacit. cap. 44. The Fenni were so barbarous, that it is wonderful how they were able to subsist; ibid. cap. 46. Whoever undertakes to describe the manners of the Germans, or to found any political theory upon the state of society among them, ought carefully to attend to both these circumstances.

Before I quit this subject, it may not be improper to observe, that, though successive alterations in their institutions, together with the gradual progress of refinement, have made an entire change in the manners of the various people, who conquered the Roman empire, there is still one race of men nearly in the same political situation with theirs, when they first settled in their new conquests; I mean the various tribes and nations of savages in North America. It cannot then be considered either as a digression, or as an improper indulgence of curiosity, to inquire whether this similarity in their political state has occasioned any resemblance between their character and manners. If the likeness turns out to be striking, it is a stronger proof

that a just account has been given of the ancient inhabitants of Europe, than the testimony even of Cæsar or of Tacitus.

1. The Americans subsist chiefly by hunting and fishing. Some tribes neglect agriculture entirely. Among those who cultivate some small spot near their huts, that, together with all works of labour, is performed by the women. P. Charlevoix, Journal Historique d'un Voyage de l'Amérique, 4to. Par. 1744, p. 334. In such a state of society, the common wants of men being few, and their mutual dependence upon each other small, their union is extremely imperfect and feeble, and they continue to enjoy their natural liberty almost unimpaired. It is the first idea of an American, that every man is born free and independent, and that no power on earth hath any right to diminish or circumscribe his natural liberty. There is hardly any appearance of subordination either in civil or domestic government. Every one does what he pleases. A father and mother live with their children, like persons whom chance has brought together, and whom no common bond unites. Their manner of educating their children is suitable to this principle. They never chastise or punish them, even during their infancy. As they advance in years, they continue to be entirely masters of their own actions, and seem not to be conscious of being responsible for any part of their conduct. Id. p. 272, 273.

2. The power of their civil magistrates is extremely limited. Among most of their tribes, the sachem, or chief, is elective. A council of old men is chosen to assist him, without whose advice he determines no affair of importance. The sachems neither possess nor claim any great degree of authority. They propose and entreat, rather than command. The obedience of their people is altogther voluntary. Id. p. 266. 268.

3. The savages of America engage in their military

enterprises, not from constraint, but choice. When war is resolved, a chief arises, and offers himself to be the leader. Such as are willing, for they compel no person, stand up one after another, and sing their war-song. But if, after this, any of these should refuse to follow the leader to whom they have engaged, his life would be in danger, and he would be considered as the most infamous of men. Id. p. 217, 218.

4. Such as engage to follow any leader, expect to be treated by him with great attention and respect; and he is obliged to make them presents of considerable value. Id. p. 218.

5. Among the Americans, the magistrate has scarcely any criminal jurisdiction. Id. p. 272. Upon receiving any injury, the person or family offended may inflict what punishment they please on the person who was the author of it. Id. p. 274. Their resentment and desire of vengeance are excessive and implacable. Time can neither extinguish nor abate it. It is the chief inheritance parents leave to their children; it is transmitted from generation to generation, until an occasion be found of satisfying it. Id. p. 309. Sometimes, however, the offended party is appeased. A compensation is paid for a murder that has been committed. The relations of the deceased receive it; and it consists most commonly of a captive taken in war, who being substituted in place of the person who was murdered, assumes his name, and is adopted into his family. Id. p. 274. The resemblance holds in many other particulars. It is sufficient for my purpose to have pointed out the similarity of those great features which distinguish and characterize both people. Bochart, and other philologists of the last century, who, with more erudition than science, endeavoured to trace the migrations of various nations, and who were apt, upon the slightest appearance of resemblance, to find an affinity between nations far removed from each other, and to conclude that they were de-

scended from the same ancestors, would hardly have failed, on viewing such an amazing similarity, to pronounce with confidence: "That the Germans and Americans must be the same people." But a philosopher will satisfy himself with observing: "That the characters of nations depend on the state of society in which they live, and on the political institutions established among them; and that the human mind, whenever it is placed in the same situation, will, in ages the most distant, and in countries the most remote, assume the same form, and be distinguished by the same manners."

I have pushed the comparison between the Germans and Americans no farther than was necessary for the illustration of my subject. I do not pretend that the state of society in the two countries was perfectly similar in every respect. Many of the German tribes were more civilized than the Americans. Some of them were not unacquainted with agriculture; almost all of them had flocks of tame cattle, and depended upon them for the chief part of their subsistence. Most of the American tribes subsist by hunting, and are in a ruder and more simple state than the ancient Germans. The resemblance, however, between their condition, is greater, perhaps, than any that history affords an opportunity of observing between any two races of uncivilized people, and this has produced a surprising similarity of manners.

Note VII. Sect. I. p. 11, i.

The booty gained by an army belonged to the army. The king himself had no part of it but what he acquired by lot. A remarkable instance of this occurs in the history of the Franks. The army of Clovis, the founder of the French monarchy, having plundered a church, carried off, among other sacred utensils, a vase of extraordinary size and beauty. The bishop sent deputies to Clovis, beseeching him to restore the vase,

that it might be again employed in the sacred services to which it had been consecrated. Clovis desired the deputies to follow him to Soissons, as the booty was to be divided in that place; and promised, that, if the lot should give him the disposal of the vase, he would grant what the bishop desired. When he came to Soissons, and all the booty was placed in one great heap, in the middle of the army, Clovis entreated, that, before making the division, they would give him that vase over and above his share. All appeared willing to gratify the king, and to comply with his request, when a fierce and haughty soldier lifted up his battle axe, and, striking the vase with the utmost violence, cried out with a loud voice, "You shall receive nothing here but that to which the lot gives you a right." Gregor. Turon. Histor. Francorum, lib. ii. c. 27, p. 70. Par. 1610.

Note VIII. Sect. I. p. 13, m.

The history of the establishment and progress of the feudal system, is an interesting object to all the nations of Europe. In some countries, their jurisprudence and laws are still, in a great measure, feudal. In others, many forms and practices established by custom, or founded on statutes, took their rise from the feudal law, and cannot be understood without attending to the ideas peculiar to it. Several authors of the highest reputation for genius and erudition, have endeavoured to illustrate this subject, but still many parts of it are obscure. I shall endeavour to trace, with precision, the progress and variation of ideas concerning property in land among the barbarous nations; and shall attempt to point out the causes which introduced these changes, as well as the effects which followed upon them. Property in land seems to have gone through four successive changes among the people who settled in the various provinces of the Roman empire.

I. While the barbarous nations remained in their original countries, their property in land was only temporary, and they had no certain limits to their possessions. After feeding their flocks in one district, they removed with them, and with their wives and families, to another; and abandoned that likewise in a short time. They were not, in consequence of this imperfect species of property, brought under any positive or formal obligation to serve the community; all their services were purely voluntary. Every individual was at liberty to choose how far he would contribute towards carrying on any military enterprise. If he followed a leader in any expedition, it was from attachment, not from a sense of obligation. The clearest proof of this has been produced in Note vi. While property continued in this state, we can discover nothing that bears any resemblance to a feudal tenure, or to the subordination and military service which the feudal system introduced.

II. Upon settling in the countries which they had subdued, the victorious troops divided the conquered lands. Whatever portion of them fell to a soldier, he seized as the recompense due to his valour, as a settlement acquired by his own sword. He took possession of it as a freeman in full property. He enjoyed it during his own life, and could dispose of it at pleasure, or transmit it as an inheritance to his children. Thus property in land became fixed. It was at the same time 'allodial,' i. e. the possessor had the entire right of property and dominion; he held of no sovereign or superior lord, to whom he was bound to do homage, and perform service. But as these new proprietors were in some danger, as has been observed in the text, of being disturbed by the remainder of the ancient inhabitants, and in still greater danger of being attacked by successive colonies of barbarians as fierce and rapacious as themselves, they saw the necessity of coming under obligations to defend the community,

more explicit than those to which they had been subject in their original habitations. On this account, immediately upon their fixing in their new settlements, every freeman became bound to take arms in defence of the community, and, if he refused or neglected so to do, was liable to a considerable penalty. I do not mean that any contract of this kind was formally concluded, or mutually ratified by any legal solemnity. It was established by tacit consent, like the other compacts which hold society together. Their mutual security and preservation made it the interest of all to recognise its authority, and to enforce the observation of it. We can trace back this new obligation on the proprietors of land to a very early period in the history of the Franks. Chilperic, who began his reign a. d. 562, exacted a fine, 'bannos jussit exigi,' from certain persons who had refused to accompany him in an expedition. Gregor. Turon. lib. v. c. 26, p. 211. Childebert, who began his reign a. d. 576, proceeded in the same manner against others who had been guilty of a like crime. Id. lib. vii. c. 42, p. 342. Such a fine could not have been exacted while property continued in its first state, and military service was entirely voluntary. Charlemagne ordained, that every freeman who possessed five mansi, i. e. sixty acres of land, 'in property,' should march in person against the enemy. Capitul. a. d. 807. Louis-le-débonnaire, a. d. 815, granted lands to certain Spaniards who fled from the Saracens, and allowed them to settle in his territories, on condition that they should serve in the army 'like other freemen.' Capitul. vol. i. p. 500. By land possessed 'in property,' which is mentioned in the law of Charlemagne, we are to understand, according to the style of that age, allodial land; 'alodes' and 'proprietas,' 'alodum' and 'proprium,' being words perfectly synonymous. Du Cange, voc. Alodis. The clearest proof of the distinction between allodial and beneficiary possession is contained in two charters published by

Muratori, by which it appears, that a person might possess one part of his estate as allodial, which he could dispose of at pleasure; the other as a 'beneficium,' of which he had only the usufruct, the property returning to the superior lord on his demise. Antiq. Ital. medii Ævi, vol. i. p. 559. 565. The same distinction is pointed out in a capitulare of Charlemagne, a. d. 812, edit. Baluz. vol. i. p. 491. Count Everard, who married a daughter of Louis-le-débonnaire, in the curious testament by which he disposes of his vast estate among his children, distinguishes between what he possessed 'proprietate,' and what he held 'beneficio;' and it appears that the greater part was allodial, a. d. 837. Aub. Miræi Opera Diplomatica, Lovan. 1723, vol. p. 19.

In the same manner 'liber homo' is commonly opposed to 'vassus,' or 'vassallus;' the former denotes an allodial proprietor, the latter one who held of a superior. These 'free' men were under an obligation to serve the state; and this duty was considered as so sacred, that freemen were prohibited from entering into holy orders, unless they had obtained the consent of the sovereign. The reason given for this in the statute is remarkable: "For we are informed that some do so, not so much out of devotion, as in order to avoid that military service which they are bound to perform." Capitul. lib. i. sect. 114. If, upon being summoned into the field, any freeman refused to obey, a full 'herebannum,' i. e. a fine of sixty crowns, was to be exacted from him according to the law of the Franks. Capit. Car. Magn. ap. Leg. Longob. lib. i. tit. 14. sect. 13, p. 539. This expression, according to the law of the Franks, seems to imply, that both the obligation to serve, and the penalty on those who disregarded it, were coeval with the laws made by the Franks at their first settlement in Gaul. This fine was levied with such rigour, "that if any person convicted of this crime was insolvent, he was reduced to servi-

tude, and continued in that state, until such time as his labour should amount to the value of the 'herebannum.'" Ibid. The emperor Lotharius rendered the penalty still more severe; and if any person, possessing such an extent of property as made it incumbent on him to take the field in person, refused to obey the summons, all his goods were declared to be forfeited, and he himself might be punished with banishment. Murat. Script. Ital. vol. i. pars ii. p. 153.

III. Property in land having thus become fixed, and subject to military service, another change was introduced, though slowly, and step by step. We learn from Tacitus, that the chief men among the Germans endeavoured to attach to their persons and interests certain adherents whom he calls 'comites.' These fought under their standard, and followed them in all their enterprises. The same custom continued among them in their new settlements, and those attached or devoted followers were called 'fideles, antrustiones, homines in truste dominica, leudes.' Tacitus informs us, that the rank of a comes was deemed honourable; De Morib. Germ. c. 13. The composition, which is the standard by which we must judge of the rank and condition of persons in the middle ages, paid for the murder of one 'in truste dominica,' was triple to that paid for the murder of a freeman. Leg. Salicor. tit. 44. sect. i. et 2. While the Germans remained in their own country, they courted the favour of these comites by presents of arms and horses, and by hospitality. See Note vi. As long as they had no fixed property in land, these were the only gifts that they could bestow, and the only reward which their followers desired. But upon their settling in the countries which they conquered, and when the value of property came to be understood among them, instead of those slight presents, the kings and chieftains bestowed a more substantial recompense in land on their adherents. These grants were called 'beneficia,' because they

were gratuitous donations; and 'honores,' because they were regarded as marks of distinction. What were the services originally exacted in return for these 'beneficia' cannot be determined with absolute precision; because there are no records so ancient. When allodial possessions were first rendered feudal, they were not, at once, subjected to all the feudal services. The transition here, as in all other changes of importance, was gradual. As the great object of a feudal vassal was to obtain protection, when allodial proprietors first consented to become vassals of any powerful leader, they continued to retain as much of their ancient independence as was consistent with that new relation. The homage which they did to the superior of whom they chose to hold, was called 'homagium planum,' and bound them to nothing more than fidelity, but without any obligation either of military service, or attendance in the courts of their superior. Of this 'homagium planum' some traces, though obscure, may still be discovered. Brussel, tom. i. p. 97. Among the ancient writs published by D. D. De Vic and Vaisette, Hist. de Langued. are a great many which they call 'homagia.' They seem to be an intermediate step between the 'homagium planum,' mentioned by Brussel, and the engagement to perform complete feudal service. The one party promises protection, and grants certain castles or lands; the other engages to defend the person of the granter, and to assist him likewise in defending his property, as often as he shall be summoned to do so. But these engagements are accompanied with none of the feudal formalities, and no mention is made of any of the other feudal services. They appear rather to be a mutual contract between equals, than the engagement of a vassal to perform services to a superior lord. Preuves de l'Hist. de Lang. tom. ii. p. 173, et passim. As soon as men were accustomed to these, the other feudal services were gra-

dually introduced. M. de Montesquieu considers these 'beneficia' as fiefs, which originally subjected those who held them to military service. Esprit des Loix, l. xxx. c. 3 et 16. M. l'Abbé de Mably contends, that such as held these were at first subjected to no other service than what was incumbent on every freeman. Observations sur l'Histoire de France, vol. i. p. 356. But, upon comparing their proofs and reasonings and conjectures, it seems to be evident, that as every freeman, in consequence of his allodial property, was bound to serve the community under a severe penalty, no good reason can be assigned for conferring these 'beneficia,' if they did not subject such as received them to some new obligation. Why should a king have stripped himself of his domain, if he had not expected that, by parcelling it out, he might acquire a right to services to which he had formerly no title? We may then warrantably conclude: "That as allodial property subjected those who possessed it to serve the community, so 'beneficia' subjected such as held them to personal service and fidelity to him from whom they received these lands." These 'beneficia' were granted originally only during pleasure. No circumstance relating to the customs of the middle ages is better ascertained than this, and innumerable proofs of it might be added to those produced in Esprit des Loix, l. xxx. c. 16. and by Du Cange, vocc. Beneficium et Feudum.

IV. But the possession of benefices did not continue long in this state. A precarious tenure during pleasure was not sufficient to satisfy such as held lands, and, by various means, they gradually obtained a confirmation of their benefices during life. Feudor. lib. tit. i. Du Cange produces several quotations from ancient charters and chronicles in proof of this; Gloss. voc. Beneficium. After this, it was easy to obtain or extort charters rendering 'beneficia' hereditary, first

in the direct line, then in the collateral, and at last in the female line. Leg. Longob. lib. iii. tit. 8. Du Cange, voc. Beneficium.

It is no easy matter to fix the precise time when each of these changes took place. M. l'Abbé Mably conjectures, with some probability, that Charles Martel first introduced the practice of granting 'beneficia' for life: Observat. tom. i. p. 103. 160; and that Louis-le-débonnaire was among the first who rendered them hereditary, is evident from the authorities to which he refers; ibid. p. 429. Mabillon, however, has published a placitum of Louis-le-débonnaire, a. d. 860, by which it appears, that he still continued to grant some 'beneficia' only during life. De Re Diplomatica, lib. vi. p. 353. In the year 889, Odo, king of France, granted lands to "Ricabodo, fideli suo, jure beneficiario et fructuario," during his own life; and if he should die, and a son were born to him, that right was to continue during the life of his son. Mabillon ut supra, p. 556. This was an intermediate step between fiefs merely during life, and fiefs hereditary to perpetuity. While 'beneficia' continued under their first form, and were held only during pleasure, he who granted them not only exercised the 'dominium,' or prerogative of superior lord, but he retained the property, giving his vassal only the 'usufruct.' But under the latter form, when they became hereditary, although feudal lawyers continued to define a 'beneficium' agreeably to its original nature, the property was in effect taken out of the hands of the superior lords, and lodged in those of the vassal. As soon as the reciprocal advantages of the feudal mode of tenure came to be understood by superiors as well as vassals, that species of holding became so agreeable to both, that not only lands, but casual rents, such as the profits of a toll, the fare paid at ferries, etc. the salaries or perquisites of offices, and even pensions themselves, were granted and held as fiefs: and military service

was promised and exacted on account of these Morice, Mém. pour servir de Preuves à l'Hist. de Bretagne, tom. ii. p. 78. 690. Brussel, tom i. p. 41. How absurd soever it may seem to grant or to hold such precarious and casual property as a fief, there are instances of feudal tenures still more singular. The profits arising from the masses said at an altar were properly an ecclesiastical revenue, belonging to the clergy of the church or monastery which performed that duty; but these were sometimes seized by the powerful barons. In order to ascertain their right to them, they held them as fiefs of the church, and parcelled them out in the same manner as other property to their sub-vassals. Bouquet, Recueil des Hist. vol. x. p. 238. 480. The same spirit of encroachment which rendered fiefs hereditary, led the nobles to extort from their sovereigns hereditary grants of offices. Many of the great offices of the crown became hereditary in most of the kingdoms in Europe; and so conscious were monarchs of this spirit of usurpation among the nobility, and so solicitous to guard against it, that, on some occasions, they obliged the persons whom they promoted to any office of dignity to grant an obligation, that neither they nor their heirs should claim it as belonging to them by hereditary right. A remarkable instance of this is produced, Mém. de l'Acad. des Inscript. tom. xxx. p. 595. Another occurs in the Thesaur. Anecdot. published by Martene et Durand, vol. i. p. 873. This revolution in property occasioned a change corresponding to it in political government; the great vassals of the crown, as they acquired such extensive possessions, usurped a proportional degree of power, depressed the jurisdiction of the crown, and trampled on the privileges of the people. It is on account of this connexion, that it becomes an object of importance in history to trace the progress of feudal property; for, upon discovering in what state property was at any particular period, we may determine with

precision what was the degree of power possessed by the king or by the nobility at that juncture.

One circumstance more, with respect to the changes which property underwent, deserves attention. I have shown, that when the various tribes of barbarians divided their conquests in the fifth and sixth centuries, the property which they acquired was allodial; but in several parts of Europe, property had become almost entirely feudal by the beginning of the tenth century. The former species of property seems to be so much better and more desirable than the latter, that such a change appears surprising, especially when we are informed that allodial property was frequently converted into feudal, by a voluntary deed of the possessor. The motives which determined them to a choice so repugnant to the ideas of modern times concerning property, have been investigated and explained by M. de Montesquieu, with his usual discernment and accuracy, lib. xxxi. c. 8. The most considerable is that of which we have an hint in Lambertus Ardensis, an ancient writer quoted by Du Cange, voc. Alodis. In those times of anarchy and disorder, which became general in Europe after the death of Charlemagne, when there was scarcely any union among the different members of the community, and individuals were exposed, single, and undefended by government, to rapine and oppression, it became necessary for every man to have a powerful protector, under whose banner he might range himself, and obtain security against enemies whom singly he could not oppose. For this reason he relinquished his allodial independence, and subjected himself to the feudal services, that he might find safety under the patronage of some respectable superior. In some parts of Europe, this change from allodial to feudal property became so general, that he who possessed land had no longer any liberty of choice left. He was obliged to recognise some liege lord, and to hold of him. Thus Beaumanoir informs us,

that in the counties of Clermont and Beauvois, if the lord or count discovered any lands within his jurisdiction, for which no service was performed, and which paid to him no taxes or customs, he might instantly seize it as his own; for, says he, according to our custom, no man can hold allodial property. Coust. c. 24, p. 123. Upon the same principle is founded a maxim, which has at length become general in the law of France, 'Nulle terre sans seigneur.' In other provinces of France, allodial property seems to have remained longer unalienated, and to have been more highly valued. A great number of charters, containing grants, or sales, or exchanges of allodial lands in the province of Languedoc, are published, Hist. Génér. de Langued. par D. D. De Vic et Vaisette, tom. ii. During the ninth, tenth, and great part of the eleventh century, the property in that province seems to have been entirely allodial; and scarcely any mention of feudal tenures occurs in the deeds of that country. The state of property, during these centuries, seems to have been perfectly similar in Catalonia and the country of Roussillon, as appears from the original charters published in the Appendix to Petr. de la Marca's treatise de Marca sive Limite Hispanico. Allodial property seems to have continued in the Low Countries, to a period still later. During the eleventh, twelfth, and thirteenth centuries, this species of property appears to have been of considerable extent. Miræi Opera Diplom. vol. i. p. 34. 74, 75. 83. 817, 296. 842. 847. 578. Some vestiges of allodial property appear there as late as the fourteenth century. Ibid. 218. Several facts which prove that allodial property subsisted in different parts of Europe long after the introduction of feudal tenures, and which tend to illustrate the distinction between these two different species of possession, are produced by M. Houard, Anciennes Loix des François, conservées dans les Coutumes Angloises, vol. i. p. 192, etc. The

notions of men with respect to property, vary according to the diversity of their understandings, and the caprice of their passions. At the same time that some persons were fond of relinquishing allodial property, in order to hold it by feudal tenure, others seem to have been solicitous to convert their fiefs into allodial property. An instance of this occurs in a charter of Louis-le-débonnaire, published by Eckhard, Commentarii de Rebus Franciæ Orientalis, vol. ii. p. 885. Another occurs in the year 1299, Reliquiæ MSS. omnis Ævi, by Ludwig, vol. i. p. 209; and even one as late as the year 1337, ibid. vol. vii. p. 40. The same thing took place in the Low Countries. Miræi Oper. i. p. 52.

In tracing these various revolutions of property, I have hitherto chiefly confined myself to what happened in France, because the ancient monuments of that nation have either been more carefully preserved, or have been more clearly illustrated, than those of any people in Europe.

In Italy, the same revolutions happened in property, and succeeded each other in the same order. There is some ground, however, for conjecturing, that allodial property continued longer in estimation among the Italians, than among the French. It appears, that many of the charters granted by the emperors in the ninth century conveyed an allodial right to land. Murat. Antiq. med. Ævi, vol. i. p. 575, etc. But in the eleventh century we find some examples of persons who resigned their allodial property, and received it back as a feudal tenure. Ibid. p. 610, etc. Muratori observes that the word 'feudum,' which came to be substituted in place of 'beneficium,' does not occur in any authentic charter previous to the eleventh century. Ibid. 594. A charter of king Robert of France, a. d. 1008, is the earliest deed in which I have met with the word 'feudum.' Bouquet, Recueil des Historiens des Gaules et de la France, tom. x. p. 593, b. This word

occurs indeed in an edict, a. d. 790, published by Brussel, vol. i. p. 77. But the authenticity of that deed has been called in question, and perhaps the frequent use of the word 'feudum' in it, is an additional reason for doing so. The account which I have given of the nature both of allodial and feudal possessions receives some confirmation from the etymology of the words themselves. 'Alode,' or 'allodium,' is compounded of the German particle 'an' and 'lot,' i. e. land obtained by lot. Wachteri Glossar. Germanicum, voc. Allodium, p. 35. It appears from the authorities produced by him and by Du Cange, voc. Sors, that the northern nations divided the lands which they had conquered in this manner. 'Feodum' is compounded of 'od,' possession or estate, and 'feo,' wages, pay; intimating that it was stipendiary, and granted as a recompense for service. Wachterus, ibid. voc. Feodum, p. 441.

The progress of the feudal system among the Germans was perfectly similar to that which we have traced in France. But as the emperors of Germany, especially after the imperial crown passed from the descendants of Charlemagne to the house of Saxony, were far superior to the contemporary monarchs of France in abilities, the imperial vassals did not aspire so early to independence, nor did they so soon obtain the privilege of possessing their benefices by hereditary right. According to the compilers of the Libri Feudorum, Conrad the second, or the Salic, was the first emperor who rendered fiefs hereditary. Lib. i. tit. i. Conrad began his reign a. d. 1024. Ludovicus pius, under whose reign grants of hereditary fiefs were frequent in France, succeeded his father, a. d. 814. Not only was this innovation so much later in being introduced among the vassals of the German emperors, but even after Conrad had established it, the law continued favourable to the ancient practice; and unless the charter of the vassal bore expressly that the fief

descended to his heirs, it was presumed to be granted only during life. Lib. Feud. ibid. Even after the alteration made by Conrad, it was not uncommon in Germany to grant fiefs only for life; a charter of this kind occurs as late as the year 1376. Charta ap. Boehmer. Princip. Jur. Feud. p. 361. The transmission of fiefs to collateral and female heirs took place very slowly among the Germans. There is extant a charter, a. d. 1201, conveying the right of succession to females; but it is granted as an extraordinary mark of favour, and in reward of uncommon services. Boehmer. ibid. p. 365. In Germany, as well as in France and Italy, a considerable part of the lands continued to be allodial, long after the feudal mode of tenure was introduced. It appears from the Codex Diplomaticus Monasterii Buch, that a great part of the lands in the marquisate of Misnia was still allodial as late as the thirteenth century. N°. 31. 36, 37. 46, etc. ap. Scriptores Hist. German. cura Schoetgenii et Kreysigii. Altenb. 1755, vol. ii. 183, etc. Allodial property seems to have been common in another district of the same province, during the same period. Reliquiæ Diplomaticæ Sanctimonial. Beutiz. N°. 17. 36. 58. ibid. 374, etc.

Note IX. Sect. I. p. 15, n.

As I shall have occasion, in another note, to represent the condition of that part of the people who dwelt in cities, I will confine myself in this to consider the state of the inhabitants of the country. The persons employed in cultivating the ground during the ages under review may be divided into three classes:

I. 'Servi,' or slaves. This seems to have been the most numerous class, and consisted either of captives taken in war, or of persons the property in whom was acquired in some one of the various methods enumerated by Du Cange, voc. Servus, vol. vi. p. 447. The wretched condition of this numerous race of men will

appear from several circumstances. 1. Their masters had absolute dominion over their persons. They had the power of punishing their slaves capitally, without the intervention of any judge. This dangerous right they possessed not only in the more early periods, when their manners were fierce, but it continued as late as the twelfth century. Joach. Potgiesserus de Statu Servorum. Lemgov. 1736, 4to. lib. ii. cap. i. sect. 4. 10. 13. 24. Even after this jurisdiction of masters came to be restrained, the life of a slave was deemed to be of so little value, that a very slight compensation atoned for taking it away. Idem, lib. iii. c. 6. If masters had power over the lives of their slaves, it is evident that almost no bounds would be set to the rigour of the punishments which they might inflict upon them. The codes of ancient laws prescribed punishments for the crimes of slaves, different from those which were inflicted on freemen. The latter paid only a fine or compensation; the former were subjected to corporeal punishments. The cruelty of these was, in many instances, excessive. Slaves might be put to the rack on very slight occasions. The laws, with respect to these points, are to be found in Potgiesserus, lib. iii. cap. 7. 2. and are shocking to humanity. 2. If the dominion of masters over the lives and persons of their slaves was thus extensive, it was no less so over their actions and property. They were not originally permitted to marry. Male and female slaves were allowed, and even encouraged, to cohabit together. But this union was not considered as a marriage; it was called 'contubernium,' not 'nuptiæ' or 'matrimonium.' Potgiess. lib. ii. c. 2. sect. 1. This notion was so much established, that, during several centuries after the barbarous nations embraced the christian religion, slaves, who lived as husband and wife, were not joined together by any religious ceremony, and did not receive the nuptial benediction from a priest. Ibid. sect. 10, 11. When this conjunction

between slaves came to be considered as a lawful marriage, they were not permitted to marry without the consent of their master; and such as ventured to do so, without obtaining that, were punished with great severity, and sometimes were put to death. Potgiess. ibid. sect. 12, etc. Gregor. Turon. Hist. lib. v. c. 3. When the manners of the European nations became more gentle, and their ideas more liberal, slaves who married without their master's consent were subjected only to a fine. Potgiess. ibid. sect. 20. Du Cange, Gloss. voc. Forismaritagium. 3. All the children of slaves were in the same condition with their parents, and became the property of the master. Du Cange, Gloss. voc. Servus, vol. vi. 450. Murat. Antiq. Ital. vol. i. 766. 4. Slaves were so entirely the property of their masters, that they could sell them at pleasure. While domestic slavery continued, property in a slave was sold in the same manner with that which a person had in any other moveable. Afterwards slaves became 'adscripti glebæ,' and were conveyed by sale, together with the farm or estate to which they belonged. Potgiesserus has collected the laws and charters which illustrate this well-known circumstance in the condition of slaves. Lib. ii. c. 4. . 5. Slaves had a title to nothing but subsistence and clothes from their master; all the profits of their labour accrued to him. If a master, from indulgence, gave his slaves any 'peculium,' or fixed allowance for their subsistence, they had no right of property in what they saved out of that. All that they accumulated belonged to their master. Potgiess. lib. ii. c. 10. Murat. Antiq. Ital. vol. i. 768. Du Cange, voc. Servus, vol. vi. p. 451. Conformably to the same principle, all the effects of slaves belonged to their master at their death, and they could not dispose of them by testament. Potgiess. lib. ii. c. 11. 6. Slaves were distinguished from freemen by a peculiar dress. Among all the barbarous nations, long hair was a mark of dignity and of freedom; slaves were, for that reason,

obliged to shave their heads; and, by this distinction, how indifferent soever it may be in its own nature, they were reminded every moment of the inferiority of their condition. Potgiess. lib. iii. c. 4. For the same reason, it was enacted in the laws of almost all the nations of Europe, that no slave should be admitted to give evidence against a freeman in a court of justice. Du Cange, voc. Servus, vol. vi. p. 451. Potgiess. lib. 3. c. 3.

II. 'Villani.' They were likewise 'adscripti glebæ,' or 'villæ,' from which they derived their name, and were transferable along with it. Du Cange, voc. Villanus. But in this they differed from slaves, that they paid a fixed rent to their master for the land which they cultivated, and, after paying that, all the fruits of their labour and industry belonged to themselves in property. This distinction is marked by Pierre de Fontain's Conseil. Vie de St. Louis par Joinville, p. 119. édit. de Du Cange. Several cases decided agreeably to this principle, are mentioned by Muratori, ibid. p. 773.

III. The last class of persons employed in agriculture were freemen. These are distinguished by various names among the writers of the middle ages, 'arimanni, conditionales, originarii, tributales,' etc. These seem to have been persons who possessed some small allodial property of their own, and, besides that, cultivated some farm belonging to their more wealthy neighbours, for which they paid a fixed rent; and bound themselves likewise to perform several small services 'in prato vel in messe, in aratura vel in vinea,' such as ploughing a certain quantity of their landlord's ground, assisting him in harvest and vintage work, etc. The clearest proof of this may be found in Muratori, vol. i. p. 712, and in Du Cange, under the respective words above mentioned. I have not been able to discover whether these 'arimanni,' etc. were removable at pleasure, or held their farms by lease for a certain num-

ber of years. The former, if we may judge from the genius and maxims of the age, seems to be most probable. These persons, however, were considered as freemen in the most honourable sense of the word; they enjoyed all the privileges of that condition, and were even called to serve in war; an honour to which no slave was admitted. Murat. Antiq. vol. i. p. 743. vol. ii. p. 446. This account of the condition of these three different classes of persons, will enable the reader to apprehend the full force of an argument which I shall produce in confirmation of what I have said in the text concerning the wretched state of the people during the middle ages. Notwithstanding the immense difference between the first of these classes and the third, such was the spirit of tyranny which prevailed among the great proprietors of lands, and so various their opportunities of oppressing those who were settled on their estates, and of rendering their condition intolerable, that many freemen, in despair, renounced their liberty, and voluntarily surrendered themselves as slaves to their powerful masters. This they did, in order that their masters might become more immediately interested to afford them protection, together with the means of subsisting themselves and their families. The forms of such a surrender, or 'obnoxiatio,' as it was then called, are preserved by Marculfus, lib. ii. c. 28.; and by the anonymous author published by M. Bignon, together with the collection of 'formulæ' compiled by Marculfus, c. 16. In both, the reason given for the 'obnoxiatio,' is the wretched and indigent condition of the person who gives up his liberty. It was still more common for freemen to surrender their liberty to bishops or abbots, that they might partake of the security which the vassals and slaves of churches and monasteries enjoyed, in consequence of the superstitious veneration paid to the saint under whose immediate protection they were supposed to be taken. Du Cange, voc. Oblatus, vol. iv. p. 1286. That

condition must have been miserable indeed, which could induce a freeman voluntarily to renounce his liberty, and to give up himself as a slave to the disposal of another. The number of slaves in every nation of Europe was immense. The greater part of the inferior class of people in France were reduced to this state at the commencement of the third race of kings. Esprit des Loix, liv. xxx. c. 11. The same was the case in England. Brady, Pref. to Gen. Hist. Many curious facts, with respect to the ancient state of 'villains,' or slaves, in England, are published in Observations on the Statutes, chiefly the more ancient, third edit. p. 269, etc.

NOTE X. SECT. I. p. 16, o.

Innumerable proofs of this might be produced. Many charters, granted by persons of the highest rank, are preserved, from which it appears that they could not subscribe their name. It was usual for persons who could not write, to make the sign of the cross in confirmation of a charter. Several of these remain, where kings and persons of great eminence affix 'signum crucis manu propria pro ignoratione literarum.' Du Cange, voc. Crux, vol. iii. p. 1191. From this is derived the phrase of signing instead of subscribing a paper. In the ninth century, Herbaud, comes palatii, though supreme judge of the empire by virtue of his office, could not subscribe his name. Nouveau Traité de Diplomatique par deux Bénédictins, 4to. tom. ii. p. 422. As late as the fourteenth century, Du Guesclin, constable of France, the greatest man in the state, and one of the greatest men of his age, could neither read nor write. St. Palaye, Mémoires sur l'ancienne Chevalerie, tit. ii. p. 82. Nor was this ignorance confined to laymen; the greater part of the clergy was not many degrees superior to them in science. Many dignified ecclesiastics could not subscribe the canons of those councils in which they sat as members. Nouv.

Traité de Diplom. tom. ii. p. 424. One of the questions appointed by the canons to be put to persons who were candidates for orders was this: "Whether they could read the gospels and epistles, and explain the sense of them, at least literally." Regino Prumiensis, ap. Bruck. Hist. Philos. vol. iii. p. 631. Alfred the great complained, that from the Humber to the Thames there was not a priest who understood the liturgy in his mother tongue, or who could translate the easiest piece of Latin; and that from the Thames to the sea, the ecclesiastics were still more ignorant. Asserus de Rebus gestis Alfredi, ap. Camdeni Anglica, etc. p. 25. The ignorance of the clergy is quaintly described by an author of the dark ages: "Potius dediti gulæ quam glossæ; potius colligunt libras quam legunt libros; libentius intuentur Martham quam Marcum; malunt legere in salmone quam in Solomone." Alanus de Art. Predicat. ap. Lebeuf, Dissert. tom ii. p. 21. To the obvious causes of such universal ignorance, arising from the state of government and manners, from the seventh to the eleventh century, we may add the scarcity of books during that period, and the difficulty of rendering them more common. The Romans wrote their books either on parchment or on paper made of the Egyptian papyrus. The latter, being the cheapest, was, of course, the most commonly used. But after the Saracens conquered Egypt in the seventh century, the communication between that country and the people settled in Italy, or in other parts of Europe, was almost entirely broken off, and the papyrus was no longer in use among them. They were obliged, on that account, to write all their books upon parchment, and, as the price of that was high, books became extremely rare, and of great value. We may judge of the scarcity of the materials for writing them from one circumstance. There still remain several manuscripts of the eighth, ninth, and following centuries, written on parchment, from which some

former writing had been erased, in order to substitute a new composition in its place. In this manner it is probable that several works of the ancients perished. A book of Livy or of Tacitus might be erased, to make room for the legendary tale of a saint, or the superstitious prayers of a missal. Murat. Antiq. Ital. vol. iii. p. 833. P. de Montfaucon affirms, that the greater part of the manuscripts on parchment which he has seen, those of an ancient date excepted, are written on parchment from which some former treatise had been erased. Mém. de l'Acad. des Inscript. tom. ix. p. 325. As the want of materials for writing is one reason why so many of the works of the ancients have perished, it accounts likewise for the small number of manuscripts of any kind previous to the eleventh century, when they began to multiply from a cause which shall be mentioned. Hist. Littér. de France, tom. vi. p. 6. Many circumstances prove the scarcity of books during these ages. Private persons seldom possessed any books whatever. Even monasteries of considerable note had only one missal. Murat. Antiq. vol. ix. p. 789. Lupus, abbot of Ferriers, in a letter to the pope, a. d. 855, beseeches him to lend him a copy of Cicero de Oratore and Quintilian's Institutions; "for," says he, "although we have parts of those books, there is no complete copy of them in all France." Murat. Ant. vol. iii. p. 835. The price of books became so high, that persons of a moderate fortune could not afford to purchase them. The countess of Anjou paid for a copy of the Homilies of Haimon, bishop of Halberstadt, two hundred sheep, five quarters of wheat, and the same quantity of rye and millet. Histoire Littéraire de France par des Religieux Bénédictins, tom. vii. p. 3. Even so late as the year 1471, when Louis the eleventh borrowed the works of Rasis, the Arabian physician, from the faculty of medicine in Paris, he not only deposited in pledge a considerable quantity of plate, but was obliged to procure a noble-

man to join with him as surety in a deed, binding himself, under a great forfeiture, to restore it. Gabr. Naudé, Addit. à l'Histoire de Louys XI. par Comines, édit. de Fresnoy, tom. iv. p. 281. Many curious circumstances, with respect to the extravagant price of books in the middle ages, are collected by that industrious compiler, to whom I refer such of my readers as deem this small branch of literary history an object of curiosity. When any person made a present of a book to a church or monastery, in which were the only libraries during several ages, it was deemed a donative of such value, that he offered it on the altar 'pro remedio animæ suæ,' in order to obtain the forgiveness of his sins. Murat. vol. iii. p. 836. Hist. Littér. de France, tom. vi. p. 6. Nouv. Trait. de Diplomat. par deux Bénédictins, 4to. tom. i. p. 481. In the eleventh century, the art of making paper, in the manner now become universal, was invented; by means of that, not only the number of manuscripts increased, but the study of the sciences was wonderfully facilitated. Murat. ib. p. 871. The invention of the art of making paper, and the invention of the art of printing, are two considerable events in literary history. It is remarkable, that the former preceded the first dawning of letters and improvement in knowledge towards the close of the eleventh century; the latter ushered in the light which spread over Europe at the æra of the reformation.

Note XI. Sect. I. p. 17, p.

All the religious maxims and practices of the dark ages are a proof of this. I shall produce one remarkable testimony in confirmation of it, from an author canonized by the church of Rome, St. Eloy, or Egidius, bishop of Noyon, in the seventh century. "He is a good christian who comes frequently to church; who presents the oblation which is offered to God upon the altar; who doth not taste of the fruits of his own in-

dustry, until he has consecrated a part of them to God; who, when the holy festivals approach, lives chastely, even with his own wife, during several days, that with a safe conscience he may draw near the altar of God; and who, in the last place, can repeat the creed and the Lord's prayer. Redeem then your souls from destruction while you have the means in your power; offer presents and tithes to churchmen; come more frequently to church; humbly implore the patronage of the saints; for, if you observe these things, you may come with security in the day of retribution to the tribunal of the eternal judge, and say, 'Give to us, O Lord, for we have given unto thee.'" Dacherii Spicilegium Vet. Script. vol. ii. p. 94. The learned and judicious translator of Dr. Mosheim's Ecclesiastical History, to one of whose additional notes I am indebted for my knowledge of this passage, subjoins a very proper reflection: "We see here a large and ample description of a good christian, in which there is not the least mention of the love of God, resignation to his will, obedience to his laws, or of justice, benevolence, and charity towards men." Mosh. Eccles. Hist. vol. i. p. 324.

Note XII. Sect. I. p. 17, q.

That infallibility in all its determinations, to which the church of Rome pretends, has been attended with one unhappy consequence. As it is impossible to relinquish any opinion, or to alter any practice, which has been established by authority that cannot err, all its institutions and ceremonies must be immutable and everlasting, and the church must continue to observe, in enlightened times, those rites which were introduced during the ages of darkness and credulity. What delighted and edified the latter must disgust and shock the former. Many of the rites observed in the Romish church appear manifestly to have been introduced by a superstition of the lowest and most illiberal species.

Many of them were borrowed, with little variation, from the religious ceremonies established among the ancient heathens. Some were so ridiculous, that if every age did not furnish instances of the fascinating influence of superstition, as well as of the whimsical forms which it assumes, it must appear incredible that they should have been ever received or tolerated. In several churches of France they celebrated a festival in commemoration of the Virgin Mary's flight into Egypt. It was called the feast of the ass. A young girl, richly dressed, with a child in her arms, was set upon an ass superbly caparisoned. The ass was led to the altar in solemn procession. High mass was said with great pomp. The ass was taught to kneel at proper places; a hymn, no less childish than impious, was sung in his praise; and, when the ceremony was ended, the priest, instead of the usual words with which he dismissed the people, brayed three times like an ass; and the people, instead of the usual response, "We bless the Lord," brayed three times in the same manner. Du Cange, voc. Festum, vol. iii. p. 424. This ridiculous ceremony was not, like the festival of fools, and some other pageants of those ages, a mere farcical entertainment exhibited in a church, and mingled, as was then the custom, with an imitation of some religious rites, it was an act of devotion, performed by the ministers of religion, and by the authority of the church. However, as this practice did not prevail universally in the catholic church, its absurdity contributed at last to abolish it.

Note XIII. Sect. I. p. 22, z.

As there is no event in the history of mankind more singular than that of the crusades, every circumstance that tends to explain or to give any rational account of this extraordinary phrensy of the human mind is interesting. I have asserted in the text, that the minds of men were prepared gradually for the amazing effort

which they made, in consequence of the exhortations of Peter the hermit, by several occurrences previous to his time. A more particular detail of this curious and obscure part of history, may, perhaps, appear to some of my readers to be of importance. That the end of the world was expected about the close of the tenth and beginning of the eleventh century; and that this occasioned a general alarm, is evident from the authors to whom I have referred in the text. This belief was so universal, and so strong, that it mingled itself with civil transactions. Many charters in the latter part of the tenth century begin in this manner: "Appropinquante mundi termino, etc. As the end of the world is now at hand, and by various calamities and judgments the signs of its approach are now manifest." Hist. de Langued. par D. D. De Vic et Vaisette, tom. ii. Preuves, p. 86. 89, 90. 117. 158, etc. One effect of this opinion was, that a great number of pilgrims resorted to Jerusalem, with a resolution to die there, or to wait the coming of the Lord; kings, earls, marquisses, bishops, and even a great number of women, besides persons of an inferior rank, flocked to the Holy Land. Glaber. Rodulph. Hist. apud Bouquet, Recueil, tom. x. p. 50. 52. Another historian mentions a vast cavalcade of pilgrims, who accompanied the count of Angoulême to Jerusalem in the year 1026. Chronic. Ademari, ibid. p. 162. Upon their return, these pilgrims filled Europe with lamentable accounts of the state of christians in the Holy Land. Willerm. Tyr. Hist. ap. Gest. Dei per Franc. vol. ii. p. 636. Guibert. Abbat. Hist. ibid. vol. i. p. 476. Besides this, it was usual for many of the christian inhabitants of Jerusalem, as well as of other cities in the east, to travel as mendicants through Europe; and, by describing the wretched condition of the professors of the christian faith under the dominion of infidels, to extort charity, and to excite zealous persons to make some attempt in order to deliver them from oppression. Baldrici Archi-

episcopi Histor. ap. Gesta Dei, etc. vol. i. p. 86. In the year 986, Gerbert, archbishop of Ravenna, afterwards pope Silvester the second, addressed a letter to all christians in the name of the church of Jerusalem. It is eloquent and pathetic, and contains a formal exhortation to take arms against the pagan oppressors, in order to rescue the holy city from their yoke. Gerberti Epistolæ ap. Bouquet, Recueil, tom. x. p. 426. In consequence of this spirited call, some subjects of the republic of Pisa equipped a fleet, and invaded the territories of the mahometans in Syria. Murat. Script. Rer. Italic. vol. iii. p. 400. The alarm was taken in the east, and an opinion prevailed, a. d. 1010, that all the forces of christendom were to unite, in order to drive the mahometans out of Palestine. Chron. Ademari ap. Bouquet, tom. x. p. 152. It is evident, from all these particulars, that the ideas which led the crusaders to undertake their wild enterprise did not arise, according to the description of many authors, from a sudden fit of frantic enthusiasm, but were gradually formed; so that the universal concourse to the standard of the cross, when erected by Urban the second, will appear less surprising.

If the various circumstances which I have enumerated in this note, as well as in the history, are sufficient to account for the ardour with which such vast numbers engaged in such a dangerous undertaking, the extensive privileges and immunities granted to the persons who assumed the cross, serve to account for the long continuance of this spirit in Europe. I. They were exempted from prosecutions on account of debt during the time of their being engaged in this holy service. Du Cange, voc. Crucis privilegium, vol. ii. p. 1194. II. They were exempted from paying interest for the money which they had borrowed, in order to fit them for this sacred warfare. Ibid. III. They were exempted either entirely, or at least during a certain time, from the payment of taxes. Ibid. Or-

donnances des Rois de France, tom. i. p. 33. IV. They might alienate their lands without the consent of the superior lord of whom they held. Ib. V. Their persons and effects were taken under the protection of St. Peter, and the anathemas of the church were denounced against all who should molest them, or carry on any quarrel or hostility against them, during their absence, on account of the holy war. Du Cange, Ibid. Guibertus Abbas, ap. Bongars. i. p. 480. 482. VI. They enjoyed all the privileges of ecclesiastics, and were not bound to plead in any civil court, but were declared subject to the spiritual jurisdiction alone. Du Cange, Ibid. Ordon. des Rois, tom. i. p. 34. 174. VII. They obtained a plenary remission of all their sins, and the gates of heaven were set open to them, without requiring any other proof of their penitence, but their engaging in this expedition; and thus, by gratifying their favourite passion, the love of war, they secured to themselves immunities, which were not usually obtained, but by paying large sums of money, or by undergoing painful penances. Guibert. Abbas, p. 480. When we behold the civil and ecclesiastical powers vying with each other, and straining their invention in order to devise expedients for encouraging and adding strength to the spirit of superstition, can we be surprised that it should become so general as to render it infamous, and a mark of cowardice, to decline engaging in the holy war? Willerm. Tyriensis, ap. Bongars. vol. ii. p. 641. The histories of the crusades, written by modern authors, who are apt to substitute the ideas and maxims of their own age in the place of those which influenced the persons whose actions they attempt to relate, convey a very imperfect notion of the spirit at that time predominant in Europe. The original historians, who were animated themselves with the same passions which possessed their contemporaries, exhibit to us a more striking picture of the times and manners which they describe.

The enthusiastic rapture with which they account for the effects of the pope's discourse in the council of Clermont; the exultation with which they mention the numbers who devoted themselves to this holy warfare; the confidence with which they express their reliance on the divine protection; the ecstasy of joy with which they describe their taking possession of the holy city, will enable us to conceive, in some degree, the extravagance of that zeal which agitated the minds of men with such violence, and will suggest as many singular reflections to a philosopher, as any occurrence in the history of mankind. It is unnecessary to select the particular passages in the several historians, which confirm this observation. But lest those authors may be suspected of adorning their narrative with any exaggerated description, I shall appeal to one of the leaders who conducted the enterprise. There is extant a letter from Stephen, the earl of Chartres and Blois, to Adela his wife, in which he gives her an account of the progress of the crusaders. He describes the crusaders as the chosen army of Christ, as the servants and soldiers of God, as men who marched under the immediate protection of the Almighty, being conducted by his hand to victory and conquest. He speaks of the Turks as accursed, sacrilegious, and devoted by heaven to destruction; and when he mentions the soldiers in the christian army, who had died, or were killed, he is confident that their souls were admitted directly into the joys of Paradise. Dacherii Spicilegium, vol. iv. p. 257.

The expense of conducting numerous bodies of men from Europe to Asia must have been excessive, and the difficulty of raising the necessary sums must have been proportionally great, during ages when the public revenues in every nation of Europe were extremely small. Some account is preserved of the expedients employed by Humbert the second, dauphin of Vienne, in order to levy the money requisite towards equipping

him for the crusade, a. d. 1346. These I shall mention, as they tend to show the considerable influence which the crusades had, both on the state of property and of civil government. I. He exposed to sale part of his domains; and as the price was destined for such a sacred service, he obtained the consent of the French king, of whom these lands were held, ratifying the alienation. Hist. du Dauphiné, tom. i. p. 332. 335. II. He issued a proclamation, in which he promised to grant new privileges to the nobles, as well as new immunities to the cities and towns, in his territories, in consideration of certain sums which they were instantly to pay on that account. Ibid. tom. ii. p. 512. Many of the charters of community, which I shall mention in another note, were obtained in this manner. III. He exacted a contribution towards defraying the charges of the expedition from all his subjects, whether ecclesiastics or laymen, who did not accompany him in person to the east. Ibid. tom. i. p. 335. IV. He appropriated a considerable part of his usual revenues for the support of the troops to be employed in this service. Ibid. tom. ii. p. 518. V. He exacted considerable sums not only of the jews settled in his dominions, but also of the Lombards and other bankers who had fixed their residence there. Ibid. tom. i. p. 338. tom. ii. p. 528. Notwithstanding the variety of these resources, the dauphin was involved in such expense by this expedition, that, on his return, he was obliged to make new demands on his subjects, and to pillage the jews by fresh exactions. Ibid. tom. i. p. 344. 347. When the count de Foix engaged in the first crusade, he raised the money necessary for defraying the expenses of that expedition by alienating part of his territories. Hist. de Langued. par D. D. De Vic et Vaisette, tom. ii. p. 287. In like manner, Baldwin, count of Hainault, mortgaged or sold a considerable portion of his dominions to the bishop of Liege, a. d. 1096. Du Mont, Corps Diplomatique, tom. i. p. 59. At a later period,

Baldwin, count of Namur, sold part of his estate to a monastery, when he intended to assume the cross, a. d. 1239. Miræi Oper. i. p. 313.

Note XIV. Sect. I. p. 26, b.

The usual method of forming an opinion concerning the comparative state of manners in two different nations, is by attending to the facts which historians relate concerning each of them. Various passages might be selected from the Byzantine historians, describing the splendour and magnificence of the Greek empire. P. de Montfaucon has produced from the writings of St. Chrysostom a very full account of the elegance and luxury of the Greeks in his age. That father, in his sermons, enters into such minute details concerning the manners and customs of his contemporaries, as appear strange in discourses from the pulpit. P. de Montfaucon has collected these descriptions, and ranged them under different heads. The court of the more early Greek emperors seems to have resembled those of eastern monarchs, both in magnificence and in corruption of manners. The emperors in the eleventh century, though inferior in power, did not yield to them in ostentation and splendour. Mémoires de l'Acad. des Inscript. tom. xx. p. 197. But we may decide concerning the comparative state of manners in the eastern empire, and among the nations in the west of Europe, by another method, which, if not more certain, is at least more striking. As Constantinople was the place of rendezvous for all the armies of the crusaders, this brought together the people of the east and west as to one great interview. There are extant several contemporary authors, both among the Greeks and Latins, who were witnesses of this singular congress of people, formerly strangers, in a great measure, to each other. They describe, with simplicity and candour, the impression which that new spectacle made upon their own minds. This may be considered as

the most lively and just picture of the real character and manners of each people. When the Greeks speak of the Franks, they describe them as barbarians, fierce, illiterate, impetuous, and savage. They assume a tone of superiority, as a more polished people, acquainted with the arts both of government and of elegance, of which the other was ignorant. It is thus Anna Comnena describes the manners of the Latins, Alexias, p. 224. 231. 237. ap. Byz. Script. vol. xi. She always views them with contempt, as a rude people, the very mention of whose names was sufficient to contaminate the beauty and elegance of history, p. 229. Nicetas Choniatas inveighs against them with still more violence, and gives an account of their ferocity and devastations, in terms not unlike those which preceding historians had employed in describing the incursions of the Goths and Vandals. Nicet. Chon. ap. Byz. Script. vol. iii. p. 302, etc. But, on the other hand, the Latin historians were struck with astonishment at the magnificence, wealth, and elegance, which they discovered in the eastern empire. "O what a vast city is Constantinople," exclaims Fulcherius Carnotensis, when he first beheld it, "and how beautiful! How many monasteries are there in it, and how many palaces built with wonderful art! How many manufactures are there in the city, amazing to behold! It would be astonishing to relate how it abounds with all good things, with gold, silver, and stuffs of various kinds; for every hour ships arrive in its port laden with all things necessary for the use of man." Fulcher. ap. Bongars. vol. i. p. 386. Willermus, archbishop of Tyre, the most intelligent historian of the crusades, seems to be fond, on every occasion, of describing the elegance and splendour of the court of Constantinople, and adds, that what he and his countrymen observed there exceeded any idea which they could have formed of it, "nostrarum enim rerum modum et dignitatem excedunt." Willerm. Tyr. ap. Bong. vol. ii. p. 657. 664.

Benjamin the jew, of Tudela, in Navarre, who began his travels a. d. 1173, appears to have been equally astonished at the magnificence of that city, and gives a description of its splendour in terms of high admiration. Benj. Tudel. ap. Les Voyages faits dans les 12e, 13e, etc. Siècles, par Bergeron, p. 10, etc. Guntherus, a French monk, who wrote a history of the conquest of Constantinople by the crusaders, in the thirteenth century, speaks of the magnificence of that city in the same tone of admiration; "Structuram autem ædificiorum in corpore civitatis, in ecclesiis videlicet, et turribus, et in domibus magnatorum, vix ullus vel describere potest, vel credere describenti, nisi qui ea oculata fide cognoverit." Hist. Constantinop. ap. Canisii Lectiones Antiquas, folio. Antw. 1725, vol. iv. p. 14. Geoffrey de Villehardouin, a nobleman of high rank, and accustomed to all the magnificence then known in the west, describes, in similar terms, the astonishment and admiration of such of his fellow-soldiers as beheld Constantinople for the first time: "They could not have believed," says he, "that there was a city so beautiful and so rich in the whole world. When they viewed its high walls, its lofty towers, its rich palaces, its superb churches, all appeared so great, that they could have formed no conception of this sovereign city, unless they had seen it with their own eyes. Histoire de la Conquête de Constant. p. 49. From these undisguised representations of their own feelings, it is evident, that to the Greeks, the crusaders appeared to be a race of rude unpolished barbarians; whereas the latter, how much soever they might contemn the unwarlike character of the former, could not help regarding them as far superior to themselves in elegance and arts. That the state of government and manners was much more improved in Italy than in the other countries of Europe, is evident not only from the facts recorded in history, but it appears that the more intelligent leaders of the crusaders were

struck with the difference. Jacobus de Vitriaco, a French historian of the holy war, makes an elaborate panegyric on the character and manners of the Italians. He views them as a more polished people, and particularly celebrates them for their love of liberty, and civil wisdom; "in consiliis circumspecti, in re sua publica procuranda diligentes et studiosi; sibi in posterum providentes; aliis subjici renuentes; ante omnia libertatem sibi defendentes; sub uno quem eligunt capitaneo, communitati suæ jura et instituta dictantes et similiter observantes." Histor. Hierosol. ap. Gesta Dei per Francos, vol. ii. p. 1085.

NOTE XV. SECT. I. p. 29, l.

The different steps taken by the cities of Italy, in order to extend their power and dominions, are remarkable. As soon as their liberties were established, and they began to feel their own importance, they endeavoured to render themselves masters of the territory round their walls. Under the Romans, when cities enjoyed municipal privileges and jurisdiction, the circumjacent lands belonged to each town, and were the property of the community. But as it was not the genius of the feudal policy to encourage cities or to show any regard for their possessions and immunities, these lands had been seized and shared among the conquerors. The barons to whom they were granted erected their castles almost at the gates of the city, and exercised their jurisdiction there. Under pretence of recovering their ancient property, many of the cities in Italy attacked these troublesome neighbours, and, dispossessing them, annexed their territories to the communities, and made thereby a considerable addition to their power. Several instances of this occur in the eleventh and beginning of the twelfth centuries. Murat. Antiq. Ital. vol. iv. p. 159, etc. Their ambition increasing together with their power, the cities afterwards attacked several barons situated

at a greater distance from their walls, and obliged them to engage that they would become members of their community; that they would take the oath of fidelity to their magistrates; that they would subject their lands to all burthens and taxes imposed by common consent; that they would defend the community against all its enemies; and that they would reside within the city during a certain specified time in each year. Murat. ibid. p. 163. This subjection of the nobility to the municipal government established in cities, became almost universal, and was often extremely grievous to persons accustomed to consider themselves as independent. Otto Frisingensis thus describes the state of Italy under Frederick the first. "The cities so much affect liberty, and are so solicitous to avoid the insolence of power, that almost all of them have thrown off every other authority, and are governed by their own magistrates; insomuch that all that country is now filled with free cities, most of which have compelled their bishops to reside within their walls; and there is scarcely any nobleman, how great soever his power may be, who is not subject to the laws and government of some city." De Gestis Frider. I. Imp. lib. ii. c. 13. p. 453. In another place he observes of the marquis of Montferrat, that he was almost the only Italian baron, who had preserved his independence, and had not become subject to the laws of any city. See also Muratori, Antichità Estensi, vol. i. p. 411, 412. That state, into which some of the nobles were compelled to enter, others embraced from choice. They observed the high degree of security, as well as of credit and estimation, which the growing wealth and dominion of the great communities procured to all the members of them. They were desirous to partake of these, and to put themselves under such powerful protection. With this view they voluntarily became citizens of the towns to which their lands were most contiguous; and, abandoning their

ancient castles, took up their residence in the cities at least during part of the year. Several deeds are still extant, by which some of the most illustrious families in Italy are associated as citizens of different cities. Murat. ibid. p. 165, etc. A charter, by which Atto de Macerata is admitted as a citizen of Osimo, a. d. 1198, in the Marcha di Ancona, is still extant. In this he stipulates, that he will acknowledge himself to be a burgess of that community; that he will, to the utmost of his power, promote its honour and welfare; that he will obey its magistrates; that he will enter into no league with its enemies; that he will reside in the town during two months in every year, or for a longer time if required by the magistrates. The community, on the other hand, take him, his family, and friends, under their protection, and engage to defend him against every enemy. Fr. Ant. Zacharias, Anecdota medii Ævi. Aug. Taurm. 1755, fol. p. 66. This privilege was deemed so important, that not only laymen, but ecclesiastics of the highest rank, condescended to be adopted as members of the great communities, in hopes of enjoying the safety and dignity which that condition conferred. Murat. ibid. p. 179. Before the institution of communities, persons of noble birth had no other residence but their castles. They kept their petty courts there; and the cities were deserted, having hardly any inhabitants but slaves or persons of low condition. But, in consequence of the practice which I have mentioned, cities not only became more populous, but were filled with inhabitants of better rank, and a custom which still subsists in Italy was then introduced, that all families of distinction reside more constantly in the great towns, than is usual in other parts of Europe. As cities acquired new consideration and dignity by the accession of such citizens, they became more solicitous to preserve their liberty and independence. The emperors, as sovereigns, had anciently a palace in almost every great city

of Italy; when they visited that country, they were accustomed to reside in these palaces, and the troops which accompanied them were quartered in the houses of the citizens. This the citizens deemed both ignominious and dangerous. They could not help considering it as receiving a master and an enemy within their walls. They laboured, therefore, to get free of this subjection. Some cities prevailed on the emperors to engage that they would never enter their gates, but take up their residence without the walls. Chart. Hen. IV. Murat. ibid. p. 24. Others obtained the imperial license to pull down the palace situated within their liberties, on condition that they built another in the suburbs for the occasional reception of the emperor. Chart. Hen. IV. Murat. ibid. p. 25. These various encroachments of the Italian cities alarmed the emperors, and put them on schemes for reestablishing the imperial jurisdiction over them on its ancient footing. Frederick Barbarossa engaged in this enterprise with great ardour. The free cities of Italy joined together in a general league, and stood on their defence; and after a long contest, carried on with alternate success, a solemn treaty of peace was concluded at Constance, a. d. 1183, by which all the privileges and immunities granted by former emperors to the principal cities in Italy were confirmed and ratified. Murat. Dissert. xlviii. This treaty of Constance was considered as such an important article in the jurisprudence of the middle ages, that it is usually published together with the Libri Feudorum at the end of the Corpus Juris Civilis. The treaty secured privileges of great importance to the confederate cities; and though it reserved a considerable degree of authority and jurisdiction to the empire, yet the cities persevered with such vigour in their efforts in order to extend their immunities, and the conjunctures in which they made them were so favourable, that, before the conclusion of the thirteenth century, most of the great

cities in Italy had shaken off all marks of subjection to the empire, and were become independent sovereign republics. It is not requisite that I should trace the various steps by which they advanced to this high degree of power, so fatal to the empire, and so beneficial to the cause of liberty in Italy. Muratori, with his usual industry, has collected many original papers which illustrate this curious and little known part of history. Murat. Antiq. Ital. Dissert. L. See also Jo. Bapt. Villanovæ Hist. Laudis Pompeii sive Lodi, in Græv. Thes. Antiquit. Ital. vol. iii. p. 888.

Note XVI. Sect. I. p. 30, m.

Long before the institution of communities in France, charters of immunity or franchise were granted to some towns and villages by the lords on whom they depended. But these are very different from such as became common in the twelfth and thirteenth centuries. They did not erect these towns into corporations; they did not establish a municipal government; they did not grant them the privilege of bearing arms. They contained nothing more than a manumission of the inhabitants from the yoke of servitude; an exemption from certain services which were oppressive and ignominious; and the establishment of a fixed tax or rent which the citizens were to pay to their lord in place of impositions which he could formerly lay upon them at pleasure. Two charters of this kind to two villages in the county of Roussillon, one in a. d. 974, the other in a. d. 1025, are still extant. Petr. de Marca, Marca, sive Limes Hispanicus, App. p. 909. 1038. Such concessions, it is probable, were not unknown in other parts of Europe, and may be considered as a step towards the more extensive privileges conferred by Louis-le-gros on the towns within his domains. The communities in France never aspired to the same independence with those in Italy. They acquired new privileges and immunities; but the right of sovereignty

remained entire to the king or baron within whose territories the respective cities were situated, and from whom they received the charter of their freedom. A great number of these charters, granted both by the kings of France and by their great vassals, are published by M. d'Achery in his Spicilegium, and many are found in the collection of the Ordonnances des Rois de France. These convey a very striking representation of the wretched condition of cities previous to the institution of communities, when they were subject to the judges appointed by the superior lords of whom they held, and who had scarcely any other law but their will. Each concession in these charters must be considered as a grant of some new privileges which the people did not formerly enjoy, and each regulation as a method of redressing some grievance under which the inhabitants of cities formerly laboured. The charters of communities contain likewise the first expedients employed for the introduction of equal laws and regular government. On both these accounts they merit particular attention; and, therefore, instead of referring my readers to the many bulky volumes in which they are scattered, I shall give them a view of some of the most important articles in these charters, ranged under two general heads. I. Such as respect personal safety. II. Such as respect the security of property.

I. During that state of turbulence and disorder which the corruption of the feudal government introduced into Europe, personal safety was the first and great object of every individual; and as the great military barons alone were able to give sufficient protection to their vassals, this was one great source of their power and authority. But, by the institution of communities, effectual provision was made for the safety of individuals, independent of the nobles. For, 1. The fundamental article in every charter was, that all the members of the community bound themselves by oath to assist, defend, and stand by each other against all

aggressors, and that they should not suffer any person to injure, distress, or molest any of their fellow-citizens. D'Acher. Spicil. x. p. 642. xi. p. 341, etc. 2. Whoever resided in any town, which was made free, was obliged, under a severe penalty, to accede to the community, and to take part in the mutual defence of its members. D'Acher. Spicil. xi. p. 344. 3. The communities had the privilege of carrying arms; of making war on their private enemies; and of executing by military force any sentence which their magistrates pronounced. D'Ach. Spicil. x. p. 643, 644. xi. p. 343. 4. The practice of making satisfaction by a pecuniary compensation for murder, assault, or other acts of violence, most inconsistent with the order of society, and the safety of individuals, was abolished; and such as committed these crimes were punished capitally, or with rigour adequate to their guilt. D'Ach. xi. p. 362. Miræi Opera Diplomatica, i. p. 292. 5. No member of a community was bound to justify or defend himself by battle or combat; but, if he was charged with any crime, he could be convicted only by the evidence of witnesses, and the regular course of legal proceedings. Miræus, ibid. D'Ach. xi. p. 375. 349. Ordon. tom. iii. p. 265. 6. If any man suspected himself to be in danger from the malice or enmity of another, upon his making oath to that effect before a magistrate, the person suspected was bound under a severe penalty to give security for his peaceable behaviour. D'Ach. xi. p. 346. This is the same species of security which is still known in Scotland under the name of 'law burrows.' In France, it was first introduced among the inhabitants of communities; and having been found to contribute considerably towards personal safety, it was extended to all the other members of the society. Establissemens de St. Louis, liv. i. cap, 28, ap. Du Cange, Vie de St. Louis, p. 15.

II. The provisions in the charters of communities concerning the security of property, are not less con-

siderable than those respecting personal safety. By the ancient law of France, no person could be arrested or confined in prison on account of any private debt. Ordon. des Rois de France, tom. i. p. 72. 80. If any person was arrested upon any pretext, but his having been guilty of a capital crime, it was lawful to rescue him out of the hands of the officers who had seized him. Ordon. iii. p. 17. Freedom from arrest, on account of debt, seems, likewise, to have been enjoyed in other countries. Gudenus, Sylloge Diplom. p. 473. In society, while it remained in its rudest and most simple form, debt seems to have been considered as an obligation merely personal. Men had made some progress towards refinement, before creditors acquired a right of seizing the property of their debtors in order to recover payment. The expedients for this purpose were all introduced originally in communities, and we can trace the gradual progress of them. 1. The simplest and most obvious species of security was, that the person who sold any commodity should receive a pledge from him who bought it, which he restored upon receiving payment. Of this custom there are vestiges in several charters of community. D'Ach. ix. p. 185. xi. p. 377. 2. When no pledge was given, and the debtor became refractory or insolvent, the creditor was allowed to seize his effects with a strong hand, and by his private authority; the citizens of Paris are warranted by the royal mandate, "ut ubicumque, et quocumque modo poterunt, tantum capiant, unde pecuniam sibi debitam integre et plenarie habeant, et inde sibi invicem adjutores existant." Ordon. etc. tom. i. p. 6. This rude practice, suitable only to the violence of that which has been called a state of nature, was tolerated longer than one can conceive to be possible in any society, where laws and order were at all known. The ordinance authorizing it was issued a. d. 1134; and that which corrects the law, and prohibits creditors from seizing the effects of their

debtors, unless by a warrant from a magistrate, and under his inspection, was not published until the year 1351. Ordon. tom. ii. p. 438. It is probable, however, that men were taught, by observing the disorders which the former mode of proceeding occasioned, to correct it in practice long before a remedy was provided by a law to that effect. Every discerning reader will apply this observation to many other customs and practices which I have mentioned. New customs are not always to be ascribed to the laws which authorize them. Those statutes only give a legal sanction to such things as the experience of mankind has previously found to be proper and beneficial. 3. As soon as the interposition of the magistrate became requisite, regular provision was made for attaching or distraining the moveable effects of a debtor; and if his moveables were not sufficient to discharge the debt, his immoveable property, or estate in land, was liable to the same distress, and was sold for the benefit of his creditor. D'Ach. ix. p. 184, 185. xi. p. 348. 380. As this regulation afforded the most complete security to the creditor, it was considered as so severe, that humanity pointed out several limitations in the execution of it. Creditors were prohibited from seizing the wearing apparel of their debtors, their beds, the door of their house, their instruments of husbandry, etc. D'Ach. ix. p. 184. xi. p. 377. Upon the same principles, when the power of distraining effects became more general, the horse and arms of a gentleman could not be seized. D'Ach. ix. p. 185. As hunting was the favourite amusement of martial nobles, the emperor Ludovicus pius prohibited the seizing of a hawk on account of any composition or debt. Capitul. lib. iv. sect. 21. But if the debtor had no other moveables, even these privileged articles might be seized. 4. In order to render the security of property complete within a community, every person who was admitted a member of it, was obliged to buy or build a house, or to purchase lands within its

precincts, or at least to bring into the town a considerable portion of his moveables, "per quæ justiciari possit, si quid forte in eum querelæ evenerit." D'Ach. xi. p. 326. Ordon. i. p. 367. Libertates S. Georgii de Esperanchia, Hist. du Dauphiné, tom. i. p. 26. 5. That security might be as perfect as possible, in some towns the members of the community seem to have been bound for each other. D'Ach. x. p. 644. 6. All questions with respect to property were tried within the community, by magistrates and judges, whom the citizens elected or appointed. Their decisions were more equal and fixed than the sentences which depended on the capricious and arbitrary will of a baron, who thought himself superior to all laws. D'Ach. x. p. 644. 646. xi. p. 344, et passim. Ordon. iii. p. 204. 7. No member of a community could be burthened by any arbitrary tax; for the superior lord, who granted the charter of community, accepted of a fixed census or duty in lieu of all demands. Ordon. tom. iii. p. 204. Libertates de Calma, Hist. du Dauphiné, tom. i. p. 19. Libertates S. Georgii de Esperanchia, ibid. p. 26. Nor could the members of a community be distressed by an unequal imposition of the sum to be levied on the community. Regulations are inserted in the charters of some communities, concerning the method of determining the quota of any tax to be levied on each inhabitant. D'Ach. xi. p. 350. 365. St. Louis published an ordinance concerning this matter, which extended to all the communities. Ordon. tom. i. p. 186. These regulations are extremely favourable to liberty, as they vest the power of proportioning the taxes in a certain number of citizens chosen out of each parish, who were bound, by solemn oath, to decide according to justice. That the more perfect security of property was one great object of those who instituted communities, we learn, not only from the nature of the thing, but from the express words of several charters, of which I shall only mention that granted by Alienor,

queen of England and dutchess of Guienne, to the community of Poitiers, "ut sua propria melius defendere possint, et magis integre custodire." Du Cange, voc. Communia, vol. ii. p. 863. Such are some of the capital regulations established in communities during the twelfth and thirteenth centuries. These may be considered as the first expedients for the reestablishment of law and order, and contributed greatly to introduce regular government among all the members of society. As soon as communities were instituted, high sentiments of liberty began to manifest themselves. When Humbert, lord of Beaujeu, upon granting a charter of community to the town of Belleville, exacted of the inhabitants an oath of fidelity to himself and successors, they stipulated, on their part, that he should swear to maintain their franchises and liberties; and, for their greater security, they obliged him to bring twenty gentlemen to take the same oath, and to be bound together with him. D'Ach. ix. p. 183. In the same manner the lord of Moriens in Dauphiné produced a certain number of persons as his sureties for the observation of the articles contained in the charter of community to that town. These were bound to surrender themselves prisoners to the inhabitants of Moriens, if their liege lord should violate any of their franchises, and they promised to remain in custody until he should grant the members of the community redress. Hist. du Dauphiné, tom. i. p. 17. If the mayor or chief magistrate of a town did any injury to a citizen, he was obliged to give security for his appearance in judgment, in the same manner as a private person; and, if cast, was liable to the same penalty. D'Ach. ix. p. 183. These are ideas of equality uncommon in the feudal times. Communities were so favourable to freedom, that they were distinguished by the name of 'libertates.' Du Cange, vol. ii. p. 863. They were at first extremely odious to the nobles, who foresaw what a check they must prove to their

power and domination. Guibert, abbot of Nogent, calls them execrable inventions, by which, contrary to law and justice, slaves withdrew themselves from that obedience which they owed to their masters. Du Cange, ibid. p. 862. The zeal with which some of the nobles and powerful ecclesiastics opposed the establishment of communities, and endeavoured to circumscribe their privileges, was extraordinary. A striking instance of this occurs in the contests between the archbishop of Rheims, and the inhabitants of that community. It was the chief business of every archbishop, during a considerable time, to abridge the rights and jurisdiction of the community; and the great object of the citizens, especially when the see was vacant, to maintain, to recover, and to extend their own jurisdiction. Histoire civile et politique de la Ville de Reims, par M. Anquetil, tom. i. p. 287, etc.

The observations which I have made concerning the low state of cities, and the condition of their inhabitants, are confirmed by innumerable passages in the historians and laws of the middle ages. It is not improbable, however, that some cities of the first order were in a better state, and enjoyed a superior degree of liberty. Under the Roman government, the municipal government established in cities was extremely favourable to liberty. The jurisdiction of the senate in each corporation and the privileges of the citizens were both extensive. There is reason to believe that some of the greater cities, which escaped the destructive rage of the barbarous nations, still retained their ancient form of government, at least in a great measure. They were governed by a council of citizens, and by magistrates whom they themselves elected. Very strong presumptions in favour of this opinion are produced by M. l'Abbé de Bos, Hist. Crit. de la Mon. Franç. tom. i. p. 18, etc. tom. ii. p. 524, edit. 1742. It appears from some of the charters of community to cities, granted in the twelfth and thirteenth

centuries, that these only confirm the privileges possessed by the inhabitants previous to the establishment of the community. D'Acher. Spicileg. vol. xi. p. 345. Other cities claimed their privileges, as having possessed them without interruption from the times of the Romans. Hist. Crit. de la Mon. Franç. tom. ii. p. 333. But the number of cities which enjoyed such immunities was so small, as hardly, in any degree, to diminish the force of my conclusions in the text.

NOTE XVII. SECT. I. p. 30, n.

Having given a full account of the establishment as well as effects of communities in Italy and France, it will be necessary to inquire, with some attention, into the progress of cities and of municipal government in Germany. The ancient Germans had no cities. Even in their hamlets or villages, they did not build their houses contiguous to each other. Tacit. de Mor. Germ. cap. 16. They considered it as a badge of servitude, to be obliged to dwell in a city surrounded with walls. When one of their tribes had shaken off the Roman yoke, their countrymen required of them, as an evidence of their having recovered liberty, to demolish the walls of a town which the Romans had built in their country. Even the fiercest animals, said they, lose their spirit and courage when they are confined. Tacit. Histor. lib. iv. c. 64. The Romans built several cities of note on the banks of the Rhine. But in all the vast countries from that river to the coasts of the Baltic, there was hardly one city previous to the ninth century of the christian æra. Conringius, Exercitatio de Urbibus Germaniæ, Oper. vol. i. sect. 25. 27. 31, etc. Heineccius differs from Conringius with respect to this. But, even after allowing to his arguments and authorities their utmost force, they prove only, that there were a few places in those extensive regions on which some historians have bestowed the name of towns. Elem. Jur. German. lib. i. sect. 102. Under

Charlemagne, and the emperors of his family, as the political state of Germany began to improve, several cities were founded, and men became accustomed to associate and to live together in one place. Charlemagne founded two archbishoprics and nine bishoprics in the most considerable towns of Germany. Aub. Miræi Opera Diplomatica, vol. i. p. 16. His successors increased the number of these; and as bishops fixed their residence in the chief town of their diocese, and performed religious functions there, that induced many people to settle in them. Conring. ibid. sect. 48. But Henry, surnamed the fowler, who began his reign a. d. 920, must be considered as the great founder of cities in Germany. The empire was at that time infested by the incursions of the Hungarians and other barbarous people. In order to oppose them, Henry encouraged his subjects to settle in cities, which he surrounded with walls strengthened by towers. He enjoined or persuaded a certain proportion of the nobility to fix their residence in the towns, and thus rendered the condition of citizens more honourable than it had been formerly. Wittikindus, Annal. lib. i. ap. Conring. sect. 82. From this period, the number of cities continued to increase, and they became more populous and more wealthy. But cities in Germany were still destitute of municipal liberty or jurisdiction. Such of them as were situated in the imperial demesnes were subject to the emperors. Their 'comites,' 'missi,' and other judges, presided in them, and dispensed justice. Towns situated on the estate of a baron were part of his fief, and he or his officers exercised a similar jurisdiction in them. Conring. ibid. sect. 73, 74. Heinec. Elem. Jur. Germ. lib. i. sect. 104. The Germans borrowed the institution of communities from the Italians. Knipschildius, Tractatus Politico-Histor. Jurid. de Civitatum Imperialium Juribus, vol. i. lib. i. cap. 5. N°. 23. Frederick Barbarossa was the first emperor who, from the same political consideration

that influenced Louis-le-gros, multiplied communities, in order to abridge the power of the nobles. Pfeffel, Abrégé de l'Histoire et du Droit Public d'Allemagne, 4to. p. 297. From the reign of Henry the fowler, to the time when the German cities acquired full possession of their immunities, various circumstances contributed to their increase. The establishment of bishoprics, already mentioned, and the building of cathedrals, naturally induced many people to settle near the chief place of worship. It became the custom to hold councils and courts of judicature of every kind, ecclesiastical as well as civil, in cities. In the eleventh century, many slaves were enfranchised, the greater part of whom settled in cities. Several mines were discovered and wrought in different provinces, which drew together such a concourse of people as gave rise to several cities, and increased the number of inhabitants in others. Conring. sect. 105. The cities began, in the thirteenth century, to form leagues for their mutual defence, and for repressing the disorders occasioned by the private wars among the barons, as well as by their exactions. This rendered the condition of the inhabitants of cities more secure than that of any other order of men, and allured many to become members of their communities. Conring. sect. 94. There were inhabitants of three different ranks in the towns of Germany: the nobles, or 'familiæ;' the citizens, or 'liberi;' and the artisans, who were slaves, or 'homines proprii.' Knipschild. lib. ii. cap. 29. N°. 13. Henry the fifth, who began his reign a.d. 1106, enfranchised the slaves who were artisans or inhabitants in several towns, and gave them the rank of citizens or liberi. Pfeffel, p. 254. Knipsch. lib. ii. cap. 29. N°. 113. 119. Though the cities in Germany did not acquire liberty so early as those in France, they extended their privileges much farther. All the imperial and free cities, the number of which is considerable, acquired the full right of being 'immediate;' by which term, in the German

jurisprudence, we are to understand, that they are subject to the empire alone, and possess within their own precincts all the rights of complete and independent sovereignty. The various privileges of the imperial cities, the great guardians of the Germanic liberties, are enumerated by Knipschild, lib. ii. The most important articles are generally known, and it would be improper to enter into any disquisition concerning minute particulars.

Note XVIII. Sect. I. p. 30, o.

The Spanish historians are almost entirely silent concerning the origin and progress of communities in that kingdom; so that I cannot fix, with any degree of certainty, the time and manner of their first introduction there. It appears however, from Mariana, vol. ii. p. 221. fol. Hagæ, 1736, that in the year 1350, eighteen cities had obtained a seat in the cortes of Castile. From the account which will be given of their constitution and pretensions, Sect. III. of this volume[a], it appears that their privileges and form of government were the same with those of the other feudal corporations; and this, as well as the perfect similarity of political institutions and transactions in all the feudal kingdoms, may lead us to conclude that communities were introduced there in the same manner, and probably about the same time, as in the other nations of Europe. In Aragon, as I shall have occasion to observe in a subsequent note, cities seem early to have acquired extensive immunities, together with a share in the legislature. In the year 1118, the citizens of Saragossa had not only attained political liberty, but they were declared to be of equal rank with the nobles of the second class; and many other immunities, unknown to persons in their rank of life in other parts of Europe, were conferred upon them.

[a] The third in this edition of Dr. Robertson's works.

Zurita, Anales de Aragon, tom. i. p. 44. In England the establishment of communities or corporations was posterior to the conquest. The practice was borrowed from France, and the privileges granted by the crown were perfectly similar to those which I have enumerated. But as this part of history is well known to most of my readers, I shall, without entering into any critical or minute discussion, refer them to authors who have fully illustrated this interesting point in the English history. Brady's Treatise of Boroughs. Madox, Firma Burgi, cap. i. sect. ix. Hume's History of England, vol. i. Append. i. and ii. It is not improbable that some of the towns in England were formed into corporations under the Saxon kings, and that the charters granted by the kings of the Norman race were not charters of enfranchisement from a state of slavery, but a confirmation of privileges which they already enjoyed. See Lord Lyttelton's History of Henry II. vol. ii. p. 317. The English cities, however, were very inconsiderable in the twelfth century. A clear proof of this occurs in the history to which I last referred. Fitzstephen, a contemporary author, gives a description of the city of London in the reign of Henry the second; and the terms in which he speaks of its trade, its wealth, and the splendour of its inhabitants, would suggest no inadequate idea of its state at present, when it is the greatest and most opulent city of Europe. But all ideas of grandeur and magnificence are merely comparative; and every description of them in general terms is very apt to deceive. It appears from Peter of Blois, archdeacon of London, who flourished in the same reign, and who had good opportunity of being well informed, that this city, of which Fitzstephen gives such a pompous account, contained no more than forty thousand inhabitants. Ibid. 315, 316. The other cities were small in proportion, and were not in a condition to extort any extensive privileges. That the constitution of

the boroughs in Scotland, in many circumstances, resembled that of the towns in France and England, is manifest from the Leges Burgorum annexed to the Regiam Majestatem.

Note XIX. Sect. I. p. 35, t.

Soon after the introduction of the third estate into the national council, the spirit of liberty which that excited in France began to produce conspicuous effects. In several provinces of France, the nobility and communities formed associations, whereby they bound themselves to defend their rights and privileges against the formidable and arbitrary proceedings of the king. The count de Boulainvilliers has preserved a copy of one of these associations, dated in the year 1314, twelve years after the admission of the deputies from towns into the states general. Histoire de l'ancien Gouvernement de la France, tom. ii. p. 94. The vigour with which the people asserted and prepared to maintain their rights, obliged their sovereigns to respect them. Six years after this association, Philip the long issued a writ of summons to the community of Narbonne, in the following terms: "Philip, by the grace, etc. to our well-beloved, etc. As we desire, with all our heart, and above all other things, to govern our kingdom and people in peace and tranquillity, by the help of God; and to reform our said kingdom in so far as it stands in need thereof, for the public good, and for the benefit of our subjects, who in times past have been aggrieved and oppressed in divers manners by the malice of sundry persons, as we have learned by common report, as well as by the information of good men worthy of credit, and we, having determined in our council which we have called to meet in our good city, etc. to give redress to the utmost of our power, by all ways and means possible, according to reason and justice, and willing that this should be done with solemnity and deliberation by the

advice of the prelates, barons, and good towns of our realm, and particularly of you, and that it should be transacted agreeably to the will of God, and for the good of our people, therefore we command," etc. Mably, Observat. ii. App. p. 386. I shall allow these to be only the formal words of a public and legal style; but the ideas are singular, and much more liberal and enlarged than one could expect in that age. A popular monarch of Great Britain could hardly address himself to parliament in terms more favourable to public liberty. There occurs in the history of France a striking instance of the progress which the principles of liberty had made in that kingdom, and of the influence which the deputies of towns had acquired in the states general. During the calamities in which the war with England, and the captivity of king John, had involved France, the states general made a bold effort to extend their own privileges and jurisdiction. The regulations established by the states, held a. d. 1355, concerning the mode of levying taxes, the administration of which they vested not in the crown, but in commissioners appointed by the states; concerning the coining of money; concerning the redress of the grievance of purveyance; concerning the regular administration of justice; are much more suitable to the genius of a republican government than that of a feudal monarchy. This curious statute is published, Ordon. tom. iii. p. 19. Such as have not an opportunity to consult that large collection, will find an abridgment of it in Hist. de France par Villaret, tom. ix. p. 130, or in Histoire de Boulainv. tom. ii. 213. The French historians represent the bishop of Laon, and Marcel, provost of the merchants of Paris, who had the chief direction of this assembly, as seditious tribunes, violent, interested, ambitious, and aiming at innovations subversive of the constitution and government of their country. That may have been the case; but these men possessed the confidence of

the people; and the measures which they proposed as the most popular and acceptable, as well as most likely to increase their own influence, plainly prove that the spirit of liberty had spread wonderfully, and that the ideas which then prevailed in France concerning government were extremely liberal. The states general held at Paris a. d. 1355, consisted of about eight hundred members, and above one half of these were deputies from towns. M. Secousse, Préf. à Ordon. tom. iii. p. 48. It appears that in all the different assemblies of the states, held during the reign of John, the representatives of towns had great influence, and in every respect the third state was considered as coordinate, and equal to either of the other two. Ib. passim. These spirited efforts were made in France long before the house of commons in England acquired any considerable influence in the legislature. As the feudal system was carried to its utmost height in France sooner than in England, so it began to decline sooner in the former than in the latter kingdom. In England, almost all attempts to establish or to extend the liberty of the people have been successful; in France they have proved unfortunate. What were the accidental events, or political causes, which occasioned this difference, it is not my present business to inquire.

Note XX. Sect. I. p. 36, y.

In a former note, [N°. viii.] I have inquired into the condition of that part of the people which was employed in agriculture; and have represented the various hardships and calamities of their situation. When charters of liberty or manumission were granted to such persons, they contained four concessions corresponding to the four capital grievances to which men in a state of servitude are subject. 1. The right of disposing of their persons by sale or grant was relinquished. 2. Power was given to them of conveying

their property and effects by will or any other legal deed. Or if they happened to die intestate, it was provided that their property should go to their lawful heirs in the same manner as the property of other persons. 3. The services and taxes which they owed to their superior or liege lord, which were formerly arbitrary and imposed at pleasure, are precisely ascertained. 4. They are allowed the privilege of marrying according to their own inclination; formerly they could contract no marriage without their lord's permission, and with no person but one of his slaves. All these particulars are found united in the charter granted 'Habitatoribus Montis Britonis,' a. d. 1376. Hist. du Dauphiné, tom. i. p. 81. Many circumstances concurred with those which I have mentioned in the text, in procuring them deliverance from that wretched state. The gentle spirit of the christian religion; the doctrines which it teaches concerning the original equality of mankind; its tenets with respect to the divine government, and the impartial eye with which the Almighty regards men of every condition, and admits them to a participation of his benefits, are all inconsistent with servitude. But in this, as in many other instances, considerations of interest, and the maxims of false policy, led men to a conduct inconsistent with their principles. They were so sensible, however, of this inconsistency, that to set their fellow-christians at liberty from servitude was deemed an act of piety highly meritorious and acceptable to heaven. The humane spirit of the christian religion struggled long with the maxims and manners of the world, and contributed more than any other circumstance to introduce the practice of manumission. When pope Gregory the great, who flourished toward the end of the sixth century, granted liberty to some of his slaves, he gives this reason for it, "Cum redemptor noster, totius conditor naturæ, ad hoc propitiatus humanam carnem voluerit assumere, ut divinitatis suæ

gratia, dirempto, quo tenebamur captivi, vinculo, pristinæ nos restitueret libertati; salubriter agitur, si homines, quos ab initio liberos natura protulit, et jus gentium jugo substituit servitutis, in ea, qua nati fuerant, manumittentis beneficio, libertati reddantur." Gregor. Magn. ap. Potgiess. lib. iv. c. i. sect. 3. Several laws or charters founded on reasons similar to this, are produced by the same author. Accordingly, a great part of the charters of manumission, previous to the reign of Louis the tenth, are granted 'pro amore Dei, pro remedio animæ, et pro mercede animæ.' Murat. Antiq. Ital. vol. i. p. 849, 850. Du Cange, voc. Manumissio. The formality of manumission was executed in a church, as a religious solemnity. The person to be set free was led round the great altar with a torch in his hand, he took hold of the horns of the altar, and there the solemn words conferring liberty were pronounced. Du Cange, ibid. vol. iv. p. 467. I shall transcribe a part of a charter of manumission, granted a. d. 1056; both as it contains a full account of the ceremonies used in this form of manumission, and as a specimen of the imperfect knowledge of the Latin tongue in that barbarous age. It is granted by Willa the widow of Hugo, the duke and marquis, in favour of Clariza, one of her slaves. " Et ideo nos domine Wille inclite cometisse—libera et absolvo te Cleriza filia Uberto—pro timore omnipotentis Dei, et remedio luminarie anime bone memorie quondam supra scripto domini Ugo gloriossissimo, ut quando illum Dominus de hac vita migrare jusserit, pars iniqua non abeat potestatem ullam, sed anguelus Domini nostri Jesu Christi colocare dignitur illum inter sanctos dilectos suos; et beatus Petrus princips apostolorum, qui habed potestatem omnium animarum ligandi et absolvendi, ut ipsi absolvat animæ ejus de peccatis sui, aperiad illum janua paradisi; pro eadem vero rationi, in mano mite te, Benzo presbiter, ut vadat tecum in ecclesia sancti Bartholomæi apostoli; traad de tribus

vicibus circa altare ipsius ecclesiæ cum cæreo apprehensum in manibus tuis et manibus suis; deinde exite ambulate in via quadrubio, ubi quatuor vie se dividuntur. Statimq; pro remedio luminarie anime bone memorie quondam supra scripto domini Ugo et ipsi presbiter Benzo fecit omnia, et dixit, Ecce quatuor vie, ite et ambulate in quacunq; partem tibi placuerit, tam sic supra scripta Cleriza, qua nosque tui heredes, qui ab ac hora in antea nati, vel procreati fuerit utriusq; sexus," etc. Murat. ibid. p. 853. Many other charters might have been selected, which, in point of grammar or style, are in no wise superior to this. Manumission was frequently granted on death-bed or by latter will. As the minds of men are at that time awakened to sentiments of humanity and piety, these deeds proceeded from religious motives, and were granted 'pro redemptione animæ,' in order to obtain acceptance with God. Du Cange, ubi supra, p. 470, et voc. Servus, vol. vi. p. 451. Another method of obtaining liberty was by entering into holy orders, or taking the vow in a monastery. This was permitted for some time; but so many slaves escaped, by this means, out of the hands of their masters, that the practice was afterwards restrained, and at last prohibited by the laws of almost all the nations of Europe. Murat. ibid. p. 842. Conformably to the same principles, princes, on the birth of a son, or upon any other agreeable event, appointed a certain number of slaves to be enfranchised, as a testimony of their gratitude to God for that benefit. Marculfi Form. lib. i. cap. 39. There are several forms of manumission published by Marculfus, and all of them are founded on religious considerations, in order to procure the favour of God, or to obtain the forgiveness of their sins. Lib. ii. c. 23. 33, 34. edit. Baluz. The same observation holds with respect to the other collections of Formulæ annexed to Marculfus. As sentiments of religion induced some to grant liberty to their fellow-christians who groaned

under the yoke of servitude; so mistaken ideas concerning devotion led others to relinquish their liberty. When a person conceived an extraordinary respect for the saint who was the patron of any church or monastery in which he was accustomed to attend religious worship, it was not unusual among men, possessed with an excess of superstitious reverence, to give up themselves and their posterity to be the slaves of the saint. Mabillon, De Re Diplomat. lib. vi. p. 632. The 'oblati,' or voluntary slaves of churches or monasteries, were very numerous, and may be divided into three different classes. The first were such as put themselves and effects under the protection of a particular church or monastery, binding themselves to defend its privileges and property against every aggressor. These were prompted to do so, not merely by devotion, but in order to obtain that security which arose from the protection of the church. They were rather vassals than slaves, and sometimes persons of noble birth found it prudent to secure the protection of the church in this manner. Persons of the second class bound themselves to pay an annual tax or quitrent out of their estates to a church or monastery. Besides this, they sometimes engaged to perform certain services. They were called 'censuales.' The last class consisted of such as actually renounced their liberty, and became slaves, in the strict and proper sense of the word. These were called 'ministeriales,' and enslaved their bodies, as some of the charters bear, that they might procure the liberty of their souls. Potgiesserus, De Statu Servorum, lib. i. cap. i. sect. 6, 7. How zealous the clergy were to encourage the opinions which led to this practice, will appear from a clause in a charter by which one gives up himself as a slave to a monastery. "Cum sit omni carnali ingenuitate generosius extremum quodcumq; Dei servitium, scilicet quod terrena nobilitas multos plerumq; vitiorum servos facit, servitus vero Christi nobiles virtu-

tibus reddit, nemo autem sani capitis virtutibus vitia comparaverit, claret pro certo eum esse generosiorem, qui se Dei servitio præbuerit proniorem. Quod ego Ragnaldus intelligens," etc. Another charter is expressed in the following words: "Eligens magis esse servus Dei quam libertus sæculi, firmiter credens et sciens, quod servire Deo, regnare est, summaque ingenuitas sit in qua servitus comparabatur Christi," etc. Du Cange, voc. Oblatus, vol. iv. p. 1286, 1287. Great, however, as the power of religion was, it does not appear, that the enfranchisement of slaves was a frequent practice while the feudal system preserved its vigour. On the contrary, there were laws which set bounds to it as detrimental to society. Potgiess. lib. iv. c. 2. sect. 6. The inferior order of men owed the recovery of their liberty to the decline of that aristocratical policy, which lodged the most extensive power in the hands of a few members of the society, and depressed all the rest. When Louis the tenth issued his ordinance, several slaves had been so long accustomed to servitude, and their minds were so much debased by that unhappy situation, that they refused to accept of the liberty which was offered them. D'Ach. Spicil. vol. xi. p. 387. Long after the reign of Louis the tenth, several of the French nobility continued to assert their ancient dominion over their slaves. It appears, from an ordinance of the famous Bertrand de Guesclin, constable of France, that the custom of enfranchising them was considered as a pernicious innovation. Morice, Mém. pour servir de Preuves à l'Hist. de Bret. tom. ii. p. 100. In some instances, when the prædial slaves were declared to be freemen, they were still bound to perform certain services to their ancient masters; and were kept in a state different from other subjects, being restricted either from purchasing land, or becoming members of a community within the precincts of the manor to which they formerly belonged. Martene et Durand, Thesau. Anecdot. vol. i. p. 914.

This, however, seems not to have been common. There is no general law for the manumission of slaves in the statute book of England, similar to that which has been quoted from the Ordonnances of the kings of France. Though the genius of the English constitution seems early to have favoured personal liberty, personal servitude, nevertheless, continued long in England in some particular places. In the year 1514, we find a charter of Henry the eighth, enfranchising two slaves belonging to one of his manors. Rym. Fœder. vol. xiii. p. 470. As late as the year 1574, there is a commission from queen Elizabeth with respect to the manumission of certain bondmen belonging to her. Rymer, in Observat. on the Statutes, etc. p. 251.

Note XXI. Sect. I. p. 42, c.

There is no custom in the middle ages more singular than that of private war. It is a right of so great importance, and prevailed so universally, that the regulations concerning it occupy a considerable place in the system of laws during the middle ages. M. de Montesquieu, who has unravelled so many intricate points in feudal jurisprudence, and thrown light on so many customs formerly obscure and unintelligible, was not led by his subject to consider this. I shall, therefore, give a more minute account of the customs and regulations which directed a practice so contrary to the present ideas of civilized nations concerning government and order. 1. Among the ancient Germans, as well as other nations in a similar state of society, the right of avenging injuries was a private and personal right exercised by force of arms, without any reference to an umpire, or any appeal to a magistrate for decision. The clearest proofs of this were produced, Note vi. 2. This practice subsisted among the barbarous nations after their settlement in the provinces of the empire which they conquered; and as the causes of dissension among them multiplied,

their family feuds and private wars became more frequent. Proofs of this occur in their early historians. Greg. Turon. Hist. lib. vii. c. 2. lib. viii. c. 18. lib. x. c. 27, and likewise in the codes of their laws. It was not only allowable for the relations to avenge the injuries of their family, but it was incumbent on them. Thus, by the laws of the Angli and Werini, "ad quemcunque hereditas terræ pervenerit, ad illum vestis bellica, id est lorica et ultio proximi, et solatio leudis, debet pertinere," tit. vi. sect. 5. ap. Lindenbr. Leg. Salic. tit. 63. Leg. Longob. lib. ii. tit. 14. sect. 10. 3. None but gentlemen, or persons of noble birth, had the right of private war. All disputes between slaves, villani, the inhabitants of towns, and freemen of inferior condition, were decided in the courts of justice. All disputes between gentlemen and persons of inferior rank were terminated in the same manner. The right of private war supposed nobility of birth, and equality of rank in both the contending parties. Beaumanoir, Coustumes de Beauv. ch. lix. p. 300. Ordon. des Rois de France, tom ii. p. 395. sect. xvii. p. 508. sect. xv. etc. The dignified ecclesiastics likewise claimed and exercised the right of private war; but as it was not altogether decent for them to prosecute quarrels in person, 'advocati,' or 'vidames,' were chosen by the several monasteries and bishoprics. These were commonly men of high rank and reputation, who became the protectors of the churches and convents by which they were elected; espoused their quarrels and fought their battles; "armis omnia quæ erant ecclesiæ viriliter defendebant, et vigilanter protegebant." Brussel, Usage des Fiefs, tom. i. p. 144. Du Cange, voc. Advocatus. On many occasions, the martial ideas to which ecclesiastics of noble birth were accustomed, made them forget the pacific spirit of their profession, and led them into the field in person at the head of their vassals, "flamma, ferro, cæde, possessiones ecclesiarum prælati defendebant." Guido Abbas, ap.

Du Cange, ib. p. 179. 4. It was not every injury or trespass that gave a gentleman a title to make war upon his adversary. Atrocious acts of violence, insults, and affronts, publicly committed, were legal and permitted motives for taking arms against the authors of them. Such crimes as are now punished capitally in civilized nations, at that time, justified private hostilities. Beauman. ch. lix. Du Cange, Dissert. xxix. sur Joinville, p. 331. But though the avenging of injuries was the only motive that could legally authorize a private war, yet disputes concerning civil property often gave rise to hostilities, and were terminated by the sword. Du Cange, Dissert. p. 332. 5. All persons present, when any quarrel arose, or any act of violence was committed, were included in the war which it occasioned; for it was supposed to be impossible for any man, in such a situation, to remain neuter, without taking side with one or other of the contending parties. Beauman. p. 300. 6. All the kindred of the two principals in the war were included in it, and obliged to espouse the quarrel of the chieftain with whom they were connected. Du Cange, ibid. p. 332. This was founded on the maxim of the ancient Germans, "suscipere tam inimicitias seu patris, seu propinqui, quam amicitias, necesse est;" a maxim natural to all rude nations, among which the form of society, and political union, strengthen such a sentiment. This obligation was enforced by legal authority. If a person refused to take part in the quarrel of his kinsman, and to aid him against his adversary, he was deemed to have renounced all the rights and privileges of kindredship, and became incapable of succeeding to any of his relations, or of deriving any benefit from any civil right or property belonging to them. Du Cange, Dissert. p. 333. The method of ascertaining the degree of affinity which obliged a person to take part in the quarrel of a kinsman, was curious. While the church prohibited the marriage of persons within

the seventh degree of affinity, the vengeance of private war extended as far as this absurd prohibition, and all who had such a remote connexion with any of the principals were involved in the calamities of war. But when the church relaxed somewhat of its rigour, and did not extend its prohibition of marrying beyond the fourth degree of affinity, the same restriction took place in the conduct of private war. Beauman. p. 303. Du Cange, Dissert. p. 333. 7. A private war could not be carried on between two full brothers, because both have the same common kindred, and, consequently, neither had any persons bound to stand by him against the other, in the contest; but two brothers of the half blood might wage war, because each of them has a distinct kindred. Beauman. p. 299. 8. The vassals of each principal in any private war were involved in the contest, because, by the feudal maxims, they were bound to take arms in defence of the chieftain of whom they held, and to assist him in every quarrel. As soon, therefore, as feudal tenures were introduced, and this artificial connexion was established between vassals and the baron of whom they held, vassals came to be considered as in the same state with relations. Beauman. p. 303. 9. Private wars were very frequent for several centuries. Nothing contributed more to increase those disorders in government, or to encourage such ferocity of manners as reduced the nations of Europe to that wretched state which distinguished the period of history which I am reviewing. Nothing was such an obstacle to the introduction of a regular administration of justice. Nothing could more effectually discourage industry, or retard the progress and cultivation of the arts of peace. Private wars were carried on with all the destructive rage which is to be dreaded from violent resentment, when armed with force, and authorized by law. It appears from the statutes prohibiting or restraining the exercise of private hostilities, that the invasion of the most barbarous

enemy could not be more desolating to a country, or more fatal to its inhabitants, than those intestine wars. Ordon. tom. i. p. 701. tom. ii. p. 395. 408. 507, etc. The contemporary historians describe the excesses committed in prosecution of these quarrels, in such terms as excite astonishment and horrour. I shall mention only one passage from the History of the Holy War, by Guibert, abbot of Nogent: "Erat eo tempore, maximis ad invicem hostilitatibus, totius Francorum regni facta turbatio; crebra ubiq; latrocinia, viarum obsessio; audiebantur passim, immo fiebant incendia infinita; nullis præter sola et indomita cupiditate existentibus causis, extruebantur prælia; et ut brevi totum claudam, quicquid obtutibus cupidorum subjacebat, nusquam attendendo cujus esset, prædæ patebat." Gesta Dei per Francos, vol. i. p. 482.

Having thus collected the chief regulations which custom had established concerning the right and exercise of private war, I shall enumerate, in chronological order, the various expedients employed to abolish or restrain this fatal custom. 1. The first expedient employed by the civil magistrate, in order to set some bounds to the violence of private revenge, was the fixing by law the fine or composition to be paid for each different crime. The injured person was originally the sole judge concerning the nature of the wrong which he had suffered, the degree of vengeance which he should exact, as well as the species of atonement or reparation with which he might rest satisfied. Resentment became, of course, as implacable as it was fierce. It was often a point of honour not to forgive, nor to be reconciled. This made it necessary to fix those compositions which make so great a figure in the laws of barbarous nations. The nature of crimes and offences was estimated by the magistrate, and the sum due to the person offended was ascertained with a minute, and often a whimsical accuracy. Rotharis, the legislator of the Lombards, who reigned about the middle of the

seventh century, discovers his intention, both in ascertaining the composition to be paid by the offender, and in increasing its value; it is, says he, that the enmity may be extinguished, the prosecution may cease, and peace may be restored. Leg. Longob. lib. i. tit. 7. sect. 10. 2. About the beginning of the ninth century, Charlemagne struck at the root of the evil, and enacted: "That when any person had been guilty of a crime, or had committed an outrage, he should immediately submit to the penance which the church imposed, and offer to pay the composition which the law prescribed; and if the injured person or his kindred should refuse to accept of this, and presume to avenge themselves by force of arms, their lands and properties should be forfeited." Capitul. a. d. 802, edit. Baluz. vol. i. p. 371. 3. But in this, as well as in other regulations, the genius of Charlemagne advanced before the spirit of his age. The ideas of his contemporaries concerning regular government were too imperfect, and their manners too fierce to submit to this law. Private wars, with all the calamities which they occasioned, became more frequent than ever after the death of that great monarch. His successors were unable to restrain them. The church found it necessary to interpose. The most early of these interpositions now extant is towards the end of the tenth century. In the year 990, several bishops in the south of France assembled, and published various regulations, in order to set some bounds to the violence and frequency of private wars; if any person within their dioceses should venture to transgress, they ordained that he should be excluded from all christian privileges during his life, and be denied christian burial after his death. Du Mont, Corps Diplomatique, tom. i. p. 41. These, however, were only partial remedies; and, therefore, a council was held at Limoges, a. d. 994. The bodies of the saints, according to the custom of those ages, were carried thither; and by these sacred relics men

were exhorted to lay down their arms, to extinguish their animosities, and to swear that they would not, for the future, violate the public peace by their private hostilities. Bouquet, Recueil des Histor. vol. x. p. 49. 147. Several other councils issued decrees to the same effect. Du Cange, Dissert. p. 343. 4. But the authority of councils, how venerable soever in those ages, was not sufficient to abolish a custom which flattered the pride of the nobles, and gratified their favourite passions. The evil grew so intolerable, that it became necessary to employ supernatural means for suppressing it. A bishop of Aquitaine, a. d. 1032, pretended that an angel had appeared to him, and brought him a writing from heaven, enjoining men to cease from their hostilities, and to be reconciled to each other. It was during a season of public calamity that he published this revelation. The minds of men were disposed to receive pious impressions, and willing to perform any thing in order to avert the wrath of heaven. A general peace and cessation from hostilities took place, and continued for seven years; and a resolution was formed that no man should, in times to come, attack or molest his adversaries during the seasons set apart for celebrating the great festivals of the church, or from the evening of Thursday in each week, to the morning of Monday in the week ensuing, the intervening days being considered as particularly holy, our Lord's passion having happened on one of these days, and his resurrection on another. A change in the dispositions of men so sudden, and which produced a resolution so unexpected, was considered as miraculous; and the respite from hostilities which followed upon it was called 'the truce of God.' Glaber. Rodulphus, Histor. lib. v. ap. Bouquet, vol. x. p. 59. This, from being a regulation or concert in one kingdom, became a general law in christendom, was confirmed by the authority of several popes, and the violators were subjected to the penalty of excommunication. Corpus Jur. Canon.

Decretal. lib. i. tit. 34. c. 1. Du Cange, Glossar. voc. Treuga. An act of the council of Toulujes in Roussillon, a. d. 1041, containing all the stipulations required by the truce of God, is published by Dom de Vic et Dom Vaisette, Hist. de Languedoc, tom. ii. Preuves, p. 206. A cessation from hostilities during three complete days in every week, allowed such a considerable space for the passions of the antagonists to cool, and for the people to enjoy a respite from the calamities of war, as well as to take measures for their own security, that, if this truce of God had been exactly observed, it must have gone far towards putting an end to private wars. This, however, seems not to have been the case; the nobles, disregarding the truce, prosecuted their quarrels without interruption, as formerly. "Qua nimirum tempestate, universæ provinciæ adeo devastationis continuæ importunitate inquietantur, ut ne ipsa, pro observatione divinæ pacis, professa sacramenta custodiantur." Abbas Uspurgensis, apud Datt. de Pace Imperii Publica, p. 13. N°. 35. The violent spirit of the nobility could not be restrained by any engagements. The complaints of this were frequent; and bishops, in order to compel them to renew their vows and promises of ceasing from their private wars, were obliged to enjoin their clergy to suspend the performance of divine service, and the exercise of any religious function, within the parishes of such as were refractory and obstinate. Hist. de Langued. par D. D. de Vic et Vaisette, tom. ii. Preuves, p. 118. 5. The people, eager to obtain relief from their sufferings, called in a second time revelation to their aid. Towards the end of the twelfth century, a carpenter in Guienne gave out, that Jesus Christ, together with the blessed virgin, had appeared to him, and having commanded him to exhort mankind to peace, had given him, as a proof of his mission, an image of the virgin holding her son in her arms, with this inscription, 'Lamb of God, who takest away the sins of the world, give us peace.'

This low fanatic addressed himself to an ignorant age, prone to credit what was marvellous. He was received as an inspired messenger of God. Many prelates and barons assembled at Puy, and took an oath, not only to make peace with all their enemies, but to attack such as refused to lay down their arms, and to be reconciled to their enemies. They formed an association for this purpose, and assumed the honourable name of the 'brotherhood of God.' Robertus de Monte Michaele, ap. M. de Laurière, Préf. tom. i. Ordon. p. 29. But the influence of this superstitious terrour or devotion was not of long continuance. 6. The civil magistrate was obliged to exert his authority in order to check a custom which threatened the dissolution of government. Philip Augustus, as some imagine, or St. Louis, as is more probable, published an ordinance, a. d. 1245, prohibiting any person to commence hostilities against the friends and vassals of his adversary, until forty days after the commission of the crime or offence which gave rise to the quarrel; declaring, that if any man presumed to transgress this statute, he should be considered as guilty of a breach of the public peace, and be tried and punished by the judge ordinary as a traitor. Ordon. tom. i. p. 56. This was called 'the royal truce,' and afforded time for the violence of resentment to subside, as well as leisure for the good offices of such as were willing to compose the difference. The happy effects of this regulation seem to have been considerable, if we may judge from the solicitude of succeeding monarchs to enforce it. 7. In order to restrain the exercise of private war still farther, Philip the fair, towards the close of the same century, a. d. 1296, published an ordinance commanding all private hostilities to cease, while he was engaged in war against the enemies of the state. Ordon. tom. i. p. 328. 390. This regulation, which seems to be almost essential to the existence and preservation of society, was often renewed by his successors, and,

being enforced by the regal authority, proved a considerable check to the destructive contests of the nobles. Both these regulations, introduced first in France, were adopted by the other nations of Europe. 8. The evil, however, was so inveterate, that it did not yield to all these remedies. No sooner was public peace established in any kingdom, than the barons renewed their private hostilities. They not only struggled to maintain this pernicious right, but to secure the exercise of it without any restraint. Upon the death of Philip the fair, the nobles of different provinces in France formed associations, and presented remonstrances to his successor, demanding the repeal of several laws, by which he had abridged the privileges of their order. Among these, the right of private war is always mentioned as one of the most valuable; and they claim, that the restraint imposed by the truce of God, the royal truce, as well as that arising from the ordinance of the year 1296, should be taken off. In some instances, the two sons of Philip, who mounted the throne successively, eluded their demands; in others, they were obliged to make concessions. Ordon. tom. i. p. 551. 557. 561. 573. The ordinances to which I here refer are of such length that I cannot insert them, but they are extremely curious, and may be peculiarly instructive to an English reader, as they throw considerable light on that period of English history, in which the attempts to circumscribe the regal prerogative were carried on, not by the people struggling for liberty, but by the nobles contending for power. It is not necessary to produce any evidence of the continuance and frequency of private wars under the successors of Philip the fair. 9. A practice somewhat similar to the royal truce was introduced, in order to strengthen and extend it. Bonds of assurance, or mutual security, were demanded from the parties at variance, by which they obliged themselves to abstain from all hostilities, either during a time mentioned in

the bond, or for ever; and became subject to heavy penalties if they violated this obligation. These bonds were sometimes granted voluntarily, but more frequently exacted by the authority of the civil magistrate. Upon a petition from the party who felt himself weakest, the magistrate summoned his adversary to appear in court, and obliged him to give him a bond of assurance. If, after that, he committed any farther hostilities, he became subject to all the penalties of treason. This restraint on private war was known in the age of St. Louis. Establissemens, lib. i. c. 28. It was frequent in Bretagne; and, what is very remarkable, such bonds of assurance were given mutually between vassals and the lord of whom they held. Oliver de Clisson grants one to the duke of Bretagne, his sovereign. Morice, Mém. pour servir de Preuves à l'Hist. de Bret. tom. i. p. 846. ii. p. 371. Many examples of bonds of assurance in other provinces of France are collected by Brussel, tom. ii. p. 856. The nobles of Burgundy remonstrated against this practice, and obtained exemption from it as an encroachment on the privileges of their order. Ordon. tom. i. p. 558. This mode of security was first introduced in cities, and, the good effects of it having been felt there, was extended to the nobles. See Note xvi. 10. The calamities occasioned by private wars became at some times so intolerable, that the nobles entered into voluntary associations, binding themselves to refer all matters in dispute, whether concerning civil property, or points of honour, to the determination of the majority of the associates. Morice, Mém. pour servir de Preuves à l'Hist. de Bret. tom. ii. p. 728. 11. But all these expedients proving ineffectual, Charles the sixth, a. d. 1413, issued an ordinance expressly prohibiting private wars on any pretext whatsoever, with power to the judge ordinary to compel all persons to comply with this injunction, and to punish such as should prove refractory or disobedient, by imprisoning their

persons, seizing their goods, and appointing the officers of justice, 'mangeurs et gasteurs,' to live at free quarters on their estate. If those who were disobedient to this edict could not be personally arrested, he appointed their friends and vassals to be seized, and detained until they gave surety for keeping the peace; and he abolished all laws, customs, or privileges which might be pleaded in opposition to this ordinance. Ordon. tom. x. p. 138. How slow is the progress of reason and of civil order! Regulations which to us appear so equitable, obvious, and simple, required the efforts of civil and ecclesiastical authority, during several centuries, to introduce and establish them. Even posterior to this period, Louis the eleventh was obliged to abolish private wars in Dauphiné, by a particular edict, a. d. 1451. Du Cange, Dissert. p. 348.

This note would swell to a disproportionate bulk, if I should attempt to inquire with the same minute attention into the progress of this pernicious custom in the other countries of Europe. In England, the ideas of the Saxons concerning personal revenge, the right of private wars, and the composition due to the party offended, seem to have been much the same with those which prevailed on the continent. The law of Ina 'de vindicantibus,' in the eighth century, Lamb. p. 3. those of Edmund, in the tenth century, 'de homicidio,' Lamb. p. 72. and 'de inimicitiis,' p. 76. and those of Edward the confessor, in the eleventh century, 'de temporibus et diebus pacis,' or Treuga Dei, Lamb. p. 126, are perfectly similar to the 'ordonnances' of the French kings their contemporaries. The laws of Edward, 'de pace regis,' are still more explicit than those of the French monarchs, and, by several provisions in them, discover that a more perfect police was established in England at that period. Lombard, p. 128. fol. vers. Even after the conquest, private wars, and the regulations for preventing them, were not altogether unknown, as appears from Madox,

Formulare Anglicanum, N°. CXLV. and from the extracts from Domesday Book, published by Gale, Scriptores Hist. Britan. p. 759, 777. The well-known clause in the form of an English indictment, which, as an aggravation of the criminal's guilt, mentions his having assaulted a person, who was in the peace of God and of the king, seems to be borrowed from the Treuga or Pax Dei, and the Pax Regis, which I have explained. But after the conquest, the mention of private wars among the nobility occurs more rarely in the English history, than in that of any other European nation, and no laws concerning them are to be found in the body of their statutes. Such a change in their own manners, and such a variation from those of their neighbours, is remarkable. Is it to be ascribed to the extraordinary power that William the Norman acquired by right of conquest, and transmitted to his successors, which rendered the execution of justice more vigorous and decisive, and the jurisdiction of the king's court more extensive than under the monarchs on the continent? Or, was it owing to the settlement of the Normans in England, who, having never adopted the practice of private war in their own country, abolished it in the kingdom which they conquered? It is asserted in an ordinance of John, king of France, that in all times past, persons of every rank in Normandy have been prohibited to wage private war, and the practice has been deemed unlawful. Ordon. tom. ii. p. 407. If this fact were certain, it would go far towards explaining the peculiarity which I have mentioned. But as there are some English acts of parliament, which, according to the remark of the learned author of the 'Observations on the Statutes, chiefly the more ancient,' recite falsehoods, it may be added, that this is not peculiar to the laws of that country. Notwithstanding the positive assertion contained in this public law of France, there is good reason for considering it as a statute which recites a falsehood.

This, however, is not the place for discussing that point. It is an inquiry not unworthy the curiosity of an English antiquary.

In Castile, the pernicious practice of private war prevailed, and was authorized by the customs and law of the kingdom. Leges Tauri, tit. 76. cum commentario Anton. Gomezii, p. 551. As the Castilian nobles were no less turbulent than powerful, their quarrels and hostilities involved their country in many calamities. Innumerable proofs of this occur in Mariana. In Aragon, the right of private revenge was likewise authorized by law; exercised in its full extent, and accompanied with the same unhappy consequences. Hieron. Blanca, Comment. de Rebus Arag. ap. Schotti Hispan. illustrat. vol. iii. p. 733. Lex Jacobi I. a. d. 1247. Fueros y Observancias del Reyno de Aragon, lib. ix. p. 182. Several confederacies between the kings of Aragon and their nobles, for the restoring of peace, founded on the truce of God, are still extant. Petr. de Marca, Marca sive Limes Hispanic. App. 1303. 1388. 1428. As early as the year 1165, we find a combination of the king and court of Aragon, in order to abolish the right of private war, and to punish those who presumed to claim that privilege. Anales de Aragon por Zurita, vol. i. p. 73. But the evil was so inveterate, that, as late as a. d. 1519, Charles the fifth was obliged to publish a law enforcing all former regulations tending to suppress this practice. Fueros y Observanc. lib. ix. 183, b.

The Lombards, and other northern nations who settled in Italy, introduced the same maxims concerning the right of revenge into that country, and these were followed by the same effects. As the progress of the evil was perfectly similar to what happened in France, the expedients employed to check its career, or to extirpate it finally, resembled those which I have enumerated. Murat. Ant. Ital. vol. ii. p. 306, etc.

In Germany, the disorders and calamities occasioned

by the right of private war, were greater and more intolerable than in any other country of Europe. The imperial authority was so much shaken and enfeebled by the violence of the civil wars excited by the contests between the popes and the emperors of the Franconian and Suabian lines, that not only the nobility but the cities acquired almost independent power, and scorned all subordination and obedience to the laws. The frequency of these 'faidæ,' or private wars, is often mentioned in the German annals, and the fatal effects of them are most pathetically described, Datt. de Pace Imper. pub. lib. i. cap. 5. N°. 30. et passim. The Germans early adopted the Treuga Dei, which was first established in France. This, however, proved but a temporary and ineffectual remedy. The disorders multiplied so fast, and grew to be so enormous, that they threatened the dissolution of society, and compelled the Germans to have recourse to the only remedy of the evil, viz. an absolute prohibition of private wars. The emperor William published his edict to this purpose, a. d. 1255, an hundred and sixty years previous to the ordinance of Charles the sixth in France. Datt. lib. i. cap. 4. N°. 20. But neither he nor his successors had authority to secure the observance of it. This gave rise to a practice in Germany, which conveys to us a striking idea both of the intolerable calamities occasioned by private wars, and of the feebleness of government during the twelfth and thirteenth centuries. The cities and nobles entered into alliances and associations, by which they bound themselves to maintain the public peace, and to make war on such as should violate it. This was the origin of the league of the Rhine, of Suabia, and of many smaller confederacies distinguished by various names. The rise, progress, and beneficial effects of these associations are traced by Datt, with great accuracy. Whatever degree of public peace, or of regular administration was preserved in the empire from the begin-

ning of the twelfth century to the close of the fifteenth, Germany owes to these leagues. During that period, political order, respect for the laws, together with the equal administration of justice, made considerable progress in Germany. But the final and perpetual abolition of the right of private war was not accomplished until a. d. 1495. The imperial authority was, by that time, more firmly established; the ideas of men with respect to government and subordination were become more just. That barbarous and pernicious privilege of waging private war, which the nobles had so long possessed, was declared to be incompatible with the happiness and existence of society. In order to terminate any differences which might arise among the various members of the Germanic body, the imperial chamber was instituted with supreme jurisdiction, to judge without appeal in every question brought before it. That court has subsisted since that period, forming a very respectable tribunal of essential importance in the German constitution. Datt. lib. iii. iv. v. Pfeffel, Abrégé de l'Histoire du Droit, etc. p. 556.

Note XXII. Sect. I. p. 51, p.

It would be tedious, and of little use, to enumerate the various modes of appealing to the justice of God, which superstition introduced during the ages of ignorance. I shall mention only one, because we have an account of it in a 'placitum,' or trial, in the presence of Charlemagne, from which we may learn the imperfect manner in which justice was administered even during his reign. In the year 775, a contest arose between the bishop of Paris and the abbot of St. Denys, concerning the property of a small abbey. Each of them exhibited deeds and records, in order to prove the right to be in them. Instead of trying the authenticity, or considering the import of these, the point was referred to the 'judicium crucis.' Each produced a person, who, during the celebration of mass, stood

before the cross with his arms expanded; and he whose representative first became weary, and altered his posture, lost the cause. The person employed by the bishop, on this occasion, had less strength or less spirit than his adversary, and the question was decided in favour of the abbot. Mabillon de Re Diplomat. lib. vi. p. 498. If a prince so enlightened as Charlemagne countenanced such an absurd mode of decision, it is no wonder that other monarchs should tolerate it so long. M. de Montesquieu has treated of the trial by judicial combat at considerable length. The two talents which distinguish that illustrious author, industry in tracing all the circumstances of ancient and obscure institutions, and sagacity in penetrating into the causes and principles which contributed to establish them, are equally conspicuous in his observations on this subject. To these I refer the reader, as they contain most of the principles by which I have endeavoured to explain this practice. De l'Esprit des Loix, liv. xxviii. It seems to be probable from the remarks of M. de Montesquieu, as well as from the facts produced by Muratori, tom. iii. Dissert. xxxviii. that appeals to the justice of God by the experiments with fire and water, etc. were frequent among the people who settled in the different provinces of the Roman empire, before they had recourse to the judicial combat; and yet the judicial combat seems to have been the most ancient mode of terminating any controversy among the barbarous nations in their original settlements. This is evident from Velleius Paterculus, lib. ii. c. 118. who informs us that all questions which were decided among the Romans by legal trial, were terminated among the Germans by arms. The same thing appears in the ancient laws and customs of the Swedes, quoted by Jo. O. Stiernhöök de Jure Sueonum et Gothorum vetusto. 4to. Holmiæ, 1682, lib. i. c. 7. It is probable that when the various tribes which invaded the empire were converted to christianity, their ancient

custom of allowing judicial combats appeared so glaringly repugnant to the precepts of religion, that, for some time, it was abolished, and, by degrees, several circumstances which I have mentioned, led them to resume it.

It seems likewise to be probable, from a law quoted by Stiernhöök, in the treatise which I have mentioned, that the judicial combat was originally permitted, in order to determine points respecting the personal character, or reputation of individuals, and was afterwards extended not only to criminal cases, but to questions concerning property. The words of the law are: "If any man shall say to another these reproachful words, 'You are not a man equal to other men,' or, 'You have not the heart of a man,' and the other shall reply, 'I am a man as good as you,' let them meet on the highway. If he who first gave offence appear, and the person offended absent himself, let the latter be deemed a worse man even than he was called; let him not be admitted to give evidence in judgment either for man or woman, and let him not have the privilege of making a testament. If he who gave the offence be absent, and only the person offended appear, let him call upon the other thrice with a loud voice, and make a mark upon the earth, and then let him who absented himself be deemed infamous, because he uttered words which he durst not support. If both shall appear properly armed, and the person offended shall fall in the combat, let a half compensation be paid for his death. But if the person who gave the offence shall fall, let it be imputed to his own rashness. The petulance of his tongue hath been fatal to him. Let him lie in the field without any compensation being demanded for his death." Lex Uplandica, ap. Stiern. p. 76. Martial people were extremely delicate with respect to every thing that affected their reputation as soldiers. By the laws of the Salians, if any man called another a 'hare,' or accused him of having left his shield in the

field of battle, he was ordained to pay a large fine. Leg. Sal. tit. xxxii. sect. 4. 6. By the law of the Lombards, if any one called another 'arga,' i. e. a good-for-nothing fellow, he might immediately challenge him to combat. Leg. Longob. lib. i. tit. v. sect. 1. By the law of the Salians, if one called another 'cenitus,' a term of reproach equivalent to 'arga,' he was bound to pay a very high fine. Tit. xxxii. sect. 1. Paulus Diaconus relates the violent impression which this reproachful expression made upon one of his countrymen, and the fatal effects with which it was attended. De Gestis Longobard. lib. vi. c. 34. Thus the ideas concerning the point of honour, which we are apt to consider as a modern refinement, as well as the practice of duelling, to which it gave rise, are derived from the notions of our ancestors, while in a state of society very little improved.

As M. de Montesquieu's view of this subject did not lead him to consider every circumstance relative to judicial combats, I shall mention some particular facts necessary for the illustration of what I have said with respect to them. A remarkable instance occurs of the decision of an abstract point of law by combat. A question arose in the tenth century concerning the 'right of representation,' which was not then fixed, though now universally established in every part of Europe. "It was a matter of doubt and dispute," saith the historian, "whether the sons of a son ought to be reckoned among the children of the family, and succeed equally with their uncles, if their father happened to die while their grandfather was alive. An assembly was called to deliberate on this point, and it was the general opinion that it ought to be remitted to the examination and decision of judges. But the emperor, following a better course, and desirous of dealing honourably with his people and nobles, appointed the matter to be decided by battle between two champions. He who appeared in behalf of the right of children to

represent their deceased father was victorious; and it was established, by a perpetual decree, that they should hereafter share in the inheritance together with their uncles." Wittikindus Corbiensis, lib. Annal. ap. M. de Laurière, Préf. Ordon. vol. i. p. xxxiii. If we can suppose the caprice of folly to lead men to any action more extravagant than this of settling a point in law by combat, it must be that of referring the truth or falsehood of a religious opinion to be decided in the same manner. To the disgrace of human reason, it has been capable even of this extravagance. A question was agitated in Spain in the eleventh century, whether the Musarabic liturgy and ritual which had been used in the churches of Spain, or that approved of by the see of Rome, which differed in many particulars from the other, contained the form of worship most acceptable to the Deity. The Spaniards contended zealously for the ritual of their ancestors. The popes urged them to receive that to which they had given their infallible sanction. A violent contest arose. The nobles proposed to decide the controversy by the sword. The king approved of this method of decision. Two knights in complete armour entered the list. John Ruys de Matanca, the champion of the Musarabic liturgy, was victorious. But the queen and archbishop of Toledo, who favoured the other form, insisted on having the matter submitted to another trial, and had interest enough to prevail in a request, inconsistent with the laws of combat, which being considered as an appeal to God, the decision ought to have been acquiesced in as final. A great fire was kindled. A copy of each liturgy was cast into the flames. It was agreed that the book which stood this proof, and remained untouched, should be received in all the churches of Spain. The Musarabic liturgy triumphed likewise in this trial, and, if we may believe Roderigo de Toledo, remained unhurt by the fire, when the other was reduced to ashes. The queen

and archbishop had power or art sufficient to elude this decision also, and the use of the Musarabic form of devotion was permitted only in certain churches. A determination no less extraordinary than the whole transaction. Roder. de Toledo, quoted by P. Orléans, Hist. des Révol. d'Espagne, tom. i. p. 417. Mariana, lib. i. c. 18. vol. i. p. 378. A remarkable proof of the general use of trial by combat, and of the predilection for that mode of decision, occurs in the laws of the Lombards. It was a custom in the middle ages, that any person might signify publicly the law to which he chose to be subjected; and by the prescriptions of that law he was obliged to regulate his transactions, without being bound to comply with any practice authorized by other codes of law. Persons who had subjected themselves to the Roman law, and adhered to the ancient jurisprudence, as far as any knowledge of it was retained in those ages of ignorance, were exempted from paying any regard to the forms of proceedings established by the laws of the Burgundians, Lombards, and other barbarous people. But the emperor Otho, in direct contradiction to this received maxim, ordained: "That all persons, under whatever law they lived, even although it were the Roman law, should be bound to conform to the edicts concerning the trial by combat." Leg. Longob. lib. ii. tit. 55. sect. 38. While the trial by judicial combat subsisted, proof by charters, contracts, or other deeds, became ineffectual; and even this species of written evidence, calculated to render the proceedings of courts certain and decisive, was eluded. When a charter or other instrument was produced by one of the parties, his opponent might challenge it, affirm that it was false and forged, and offer to prove this by combat. Leg. Longob. ibid. sect. 34. It is true, that among the reasons enumerated by Beaumanoir, on account of which judges might refuse to permit a trial by combat, one is: "If the point in contest can be clearly proved

or ascertained by other evidence." Coust. de Beauv. ch. 63. p. 323. But that regulation removed the evil only a single step. For the party who suspected that a witness was about to depose in a manner unfavourable to his cause, might accuse him of being suborned, give him the lie, and challenge him to combat; if the witness was vanquished in battle, no other evidence could be admitted, and the party by whom he was summoned to appear lost his cause. Leg. Baivar. tit. 16. sect. 2. Leg. Burgund. tit. 45. Beauman. ch. 61. p. 315. The reason given for obliging a witness to accept of a defiance, and to defend himself by combat, is remarkable, and contains the same idea which is still the foundation of what is called the point of honour; "for it is just, that if any one affirms that he perfectly knows the truth of any thing, and offers to give oath upon it, that he should not hesitate to maintain the veracity of his affirmation in combat." Leg. Burgund. tit. 45.

That the trial by judicial combat was established in every country of Europe, is a fact well known, and requires no proof. That this mode of decision was frequent, appears not only from the codes of ancient laws which established it, but from the earliest writers concerning the practice of law in the different nations of Europe. They treat of this custom at great length; they enumerate the regulations concerning it with minute accuracy; and explain them with much solicitude. It made a capital and extensive article in jurisprudence. There is not any one subject in their system of law which Beaumanoir, Defontaines, or the compilers of the Assises de Jérusalem, seem to have considered as of greater importance; and none upon which they have bestowed so much attention. The same observation will hold with respect to the early authors of other nations. It appears from Madox, that trials of this kind were so frequent in England, that fines paid on these occasions made no inconsider-

able branch of the king's revenue. Hist. of the Exchequer, vol. i. p. 349. A very curious account of a judicial combat between messire Robert de Beaumanoir and messire Pierre Tournemine, in presence of the duke of Bretagne, a. d. 1385, is published by Morice, Mém. pour servir de Preuves à l'Hist. de Bretagne, tom. ii. p. 498. All the formalities observed in such extraordinary proceedings are there described more minutely, than in any ancient monument which I have had an opportunity of considering. Tournemine was accused by Beaumanoir of having murdered his brother. The former was vanquished, but was saved from being hanged upon the spot, by the generous intercession of his antagonist. A good account of the origin of the laws concerning judicial combat is published in the history of Pavia, by Bernardo Sacci, lib. ix. c. 8. in Græv. Thes. Antiquit. Ital. vol. iii. p. 743.

This mode of trial was so acceptable, that ecclesiastics, notwithstanding the prohibitions of the church, were constrained not only to connive at the practice, but to authorize it. A remarkable instance of this is produced by Pasquier, Recherches, liv. iv. ch. i. p. 350. The abbot Wittikindus, whose words I have produced in this note, considered the determination of a point in law by combat, as the best and most honourable mode of decision. In the year 978, a judicial combat was fought in the presence of the emperor. The archbishop Aldebert advised him to terminate a contest which had arisen between two noblemen of his court, by this mode of decision. The vanquished combatant, though a person of high rank, was beheaded on the spot. Chronic. Ditmari, Episc. Mersb. ap. Bouquet, Recueil des Hist. tom. x. p. 121. Questions concerning the property of churches and monasteries were decided by combat. In the year 961, a controversy concerning the church of St. Médard, whether it belonged to the abbey of Beaulieu or not, was terminated by judicial combat. Bouquet, Recueil

des Hist. tom. ix. p. 729. Ibid. p. 612, etc. The emperor Henry the first declares, that this law, authorizing the practice of judicial combats, was enacted with consent and applause of many faithful bishops. Ibid. p. 231. So remarkably did the martial ideas of those ages prevail over the genius and maxims of the canon law, which, in other instances, was in the highest credit and authority with ecclesiastics. A judicial combat was appointed in Spain, by Charles the fifth, a. d. 1522. The combatants fought in the emperor's presence, and the battle was conducted with all the rites prescribed by the ancient laws of chivalry. The whole transaction is described at great length by Pontus Heuterus, Rer. Austriac. lib. viii. c. 17. p. 205.

The last instance which occurs in the history of France, of a judicial combat authorized by the magistrate, was the famous one between M. Jarnac and M. de la Chaistaignerie, a. d. 1547. A trial by combat was appointed in England, a. d. 1571, under the inspection of the judges in the court of common pleas; and though it was not carried to the same extremity with the former, queen Elizabeth having interposed her authority, and enjoined the parties to compound the matter, yet, in order to preserve their honour, the lists were marked out, and all the forms previous to the combat were observed with much ceremony. Spelm. Gloss. voc. Campus, p. 103. In the year 1631, a judicial combat was appointed between Donald lord Rea and David Ramsay, esq. by the authority of the lord high constable and earl marshal of England; but that quarrel likewise terminated without bloodshed, being accommodated by Charles the first. Another instance occurs seven years later. Rushworth, in Observations on the Statutes, etc. p. 266.

Note XXIII. Sect. I. p. 56, q.

The text contains the great outlines which mark the course of private and public jurisdiction in the several

nations of Europe. I shall here follow more minutely the various steps of this progress, as the matter is curious and important enough to merit this attention. The payment of a fine by way of satisfaction to the person or family injured, was the first device of a rude people, in order to check the career of private resentment, and to extinguish those 'faidæ,' or deadly feuds, which were prosecuted among them with the utmost violence. This custom may be traced back to the ancient Germans, Tacit. de Morib. Germ. c. 21. and prevailed among other uncivilized nations. Many examples of this are collected by the ingenious and learned author of Historical Law Tracts, vol. i. p. 41. These fines were ascertained and levied in three different manners. At first they were settled by voluntary agreement between the parties at variance. When their rage began to subside, and they felt the bad effects of their continuing in enmity, they came to terms of concord, and the satisfaction made was called a 'composition,' implying that it was fixed by mutual consent. De l'Esprit des Loix, liv. xxx. c. 19. It is apparent from some of the more ancient codes of laws, that at the time when these were compiled, matters still remained in that simple state. In certain cases, the person who had committed an offence, was left exposed to the resentment of those whom he had injured, until he should recover their favour, "quoquo modo potuerit." Leg. Frision. tit. 11. sect. 1. The next mode of levying these fines was by the sentence of arbiters. An arbiter is called in the Regiam Majestatem 'amicabilis compositor,' lib. xi. c. 4. sect. 10. He could estimate the degree of offence with more impartiality than the parties interested, and determine with greater equity what satisfaction ought to be demanded. It is difficult to bring an authentic proof of a custom previous to the records preserved in any nation of Europe. But one of the Formulæ Andegavenses compiled in the sixth century, seems to al-

lude to a transaction carried on, not by the authority of a judge, but by the mediation of arbiters chosen by mutual consent. Bouquet, Recueil des Histor. tom. iv. p. 566. But as an arbiter wanted authority to enforce his decisions, judges were appointed with compulsive power to oblige both parties to acquiesce in their decisions. Previous to this last step, the expedient of paying compositions was an imperfect remedy against the pernicious effects of private resentment. As soon as this important change was introduced, the magistrate, putting himself in place of the person injured, ascertained the composition with which he ought to rest satisfied. Every possible injury that could occur in the intercourse of civil society was considered, and estimated, and the compositions due to the person aggrieved were fixed with such minute attention, as discovers, in most cases, amazing discernment and delicacy, in some instances, unaccountable caprice. Besides the composition payable to the private party, a certain sum called a 'fredum,' was paid to the king or state, as Tacitus expresses it, or to the fiscus, in the language of the barbarous laws. Some authors, blending the refined ideas of modern policy with their reasonings concerning ancient transactions, have imagined that the fredum was a compensation due to the community, on account of the violation of the public peace. But it is manifestly nothing more than the price paid to the magistrate for the protection which he afforded against the violence of resentment. The enacting of this was a considerable step towards improvement in criminal jurisprudence. In some of the more ancient codes of laws, the 'freda' are altogether omitted, or so seldom mentioned, that it is evident they were but little known. In the later codes, the fredum is as precisely specified as the composition. In common cases it was equal to the third part of the composition. Capitul. vol. i. p. 52. In some extraordinary cases, where it was more difficult to protect the person who had committed violence,

the fredum was augmented. Capitul. vol. i. p. 515. These freda made a considerable branch in the revenues of the barons; and in whatever district territorial jurisdiction was granted, the royal judges were prohibited from levying any freda. In explaining the nature of the fredum, I have followed, in a great measure, the opinion of M. de Montesquieu, though I know that several learned antiquaries have taken the word in a different sense. De l'Esprit des Loix, liv. xxx. c. 20, etc. The great object of judges was to compel the one party to give, and the other to accept the satisfaction prescribed. They multiplied regulations to this purpose, and enforced them by grievous penalties. Leg. Longob. lib. i. tit. 9. sect. 34. Ibid. tit. 37. sect. 1, 2. Capitul. vol. i. p. 371. sect. 22. The person who received a composition was obliged to cease from all farther hostility, and to confirm his reconciliation with the adverse party by an oath. Leg. Longob. lib. i. tit. 9. sect. 8. As an additional and more permanent evidence of reconciliation, he was required to grant a bond of security to the person from whom he received a composition, absolving him from all farther prosecution. Marculfus and the other collectors of ancient writs have preserved several different forms of such bonds. Marc. lib. xi. sect. 18. Append. sect. 23. Form. Sirmondicæ, sect. 39. The 'letters of Slanes,' known in the law of Scotland, are perfectly similar to these bonds of security. By the letters of Slanes, the heirs and relations of a person who had been murdered, bound themselves, in consideration of an 'assythment' or composition paid to them, to forgive, "pass over, and for ever forget, and in oblivion inter, all rancour, malice, revenge, prejudice, grudge, and resentment, that they have or may conceive against the aggressor or his posterity, for the crime which he had committed, and discharge him of all action, civil or criminal, against him or his estate, for now and ever." System of Stiles by Dallas of St. Martin's, p.

862. In the ancient form of letters of Slaues, the private party not only forgives and forgets, but pardons and grants remission of the crime. This practice, Dallas, reasoning according to the principles of his own age, considers as an encroachment on the rights of sovereignty, as none, says he, could pardon a criminal but the king. Ibid. But in early and rude times, the prosecution, the punishment, and the pardon of criminals, were all deeds of the private person who was injured. Madox has published two writs, one in the reign of Edward the first, the other in the reign of Edward the third, by which private persons grant a release or pardon of all trespasses, felonies, robberies, and murders committed. Formul. Anglican. N°. 702. 705. In the last of these instruments, some regard seems to be paid to the rights of the sovereign, for the pardon is granted 'en quant que en nous est.' Even after the authority of the magistrate was interposed in punishing crimes, the punishment of criminals is long considered chiefly as a gratification to the resentment of the persons who have been injured. In Persia a murderer is still delivered to the relations of the person whom he has slain, who put him to death with their own hands. If they refuse to accept of a sum of money as a compensation, the sovereign, absolute as he is, cannot pardon the murderer. Voyages de Chardin, iii. p. 417. edit. 1735, 4to. Voyages de Tavernier, liv. v. ch. 5. 10. Among the Arabians, though one of the first polished people in the east, the same custom still subsists. Description de l'Arabie par M. Niebuhr, p. 28. By a law in the kingdom of Aragon, as late as the year 1564, the punishment of one condemned to death cannot be mitigated but by consent of the parties who have been injured. Fueros y Observancias del Reyno de Aragon, p. 204. 6.

If, after all the engagements to cease from enmity which I have mentioned, any person renewed hostilities, and was guilty of any violence, either towards the

person from whom he had received a composition, or towards his relations and heirs, this was deemed a most heinous crime, and punished with extraordinary rigour. It was an act of direct rebellion against the authority of the magistrate, and was repressed by the interposition of all his power. Leg. Longob. lib. i. tit. 9. sect. 8. p. 34. Capit. vol. i. p. 371. sect. 22. Thus the avenging of injuries was taken out of private hands, a legal composition was established, and peace and amity were restored under the inspection, and by the authority of a judge. It is evident, that at the time when the barbarians settled in the provinces of the Roman empire, they had fixed judges established among them with compulsive authority. Persons vested with this character are mentioned by the earliest historians. Du Cange, voc. Judices. The right of territorial jurisdiction was not altogether an usurpation of the feudal barons, or an invasion of the prerogative of the sovereign. There is good reason to believe, that the powerful leaders, who seized different districts of the countries which they conquered, and kept possession of them as 'allodial' property, assumed from the beginning the right of jurisdiction, and exercised it within their own territories. This jurisdiction was supreme, and extended to all causes. The clearest proofs of this are produced by M. Bouquet, Le Droit public de France éclairci, etc. tom. i. p. 206, etc. The privilege of judging his own vassals, appears to have been originally a right inherent in every baron who held a fief. As far back as the archives of nations can conduct us with any certainty, we find the jurisdiction and fief united. One of the earliest charters to a layman which I have met with, is that of Ludovicus pius, a. d. 814. And it contains the right of territorial jurisdiction, in the most express and extensive terms. Capitul. vol. ii. p. 1405. There are many charters to churches and monasteries of a more early date, containing grants of similar jurisdiction, and prohibiting any royal judge to

enter the territories of those churches or monasteries, or to perform any act of judicial authority there. Bouquet, Recueil des Hist. tom. iv. p. 628. 631. 633. tom. v. p. 703. 710. 752. 762. Muratori has published many very ancient charters containing the same immunities. Antiq. Ital. Dissert. lxx. In most of these deeds, the royal judge is prohibited from exacting the 'freda' due to the possessor of territorial jurisdiction, which shows that they constituted a valuable part of the revenue of each superior lord at that juncture. The expense of obtaining a sentence in a court of justice, during the middle ages, was so considerable, that this circumstance alone was sufficient to render men unwilling to decide any contest in judicial form. It appears from a charter in the thirteenth century, that the baron who had the right of justice, received the fifth part of the value of every subject, the property of which was tried and determined in his court. If, after the commencement of a lawsuit, the parties terminated the contest in an amicable manner, or by arbitration, they were nevertheless bound to pay the fifth part of the subject contested, to the court before which the suit had been brought. Hist. du Dauphiné, Genève, 1722, tom. i. p. 22. Similar to this is a regulation in the charter of liberty granted to the town of Friburg, a. d. 1120. If two of the citizens shall quarrel, and if one of them shall complain to the superior lord or to his judge, and after commencing the suit shall be privately reconciled to his adversary, the judge, if he does not approve of this reconciliation, may compel him to go on with his lawsuit, and all who were present at the reconciliation shall forfeit the favour of the superior lord. Historia Zaringo-Badensis. Auctor. Jo. Dan. Schœpflinus. Carolsr. 1765. 4to. vol. v. p. 55.

What was the extent of that jurisdiction which those who held fiefs possessed originally, we cannot now determine with certainty. It is evident, that,

during the disorders which prevailed in every kingdom of Europe, the great vassals took advantage of the feebleness of their monarchs, and enlarged their jurisdictions to the utmost. As early as the tenth century, the more powerful barons had usurped the right of deciding all causes, whether civil or criminal. They had acquired the 'high justice' as well as the 'low.' Establ. de St. Louis, liv. i. c. 24, 25. Their sentences were final, and there lay no appeal from them to any superior court. Several striking instances of this are collected by Brussel. Traité des Fiefs, liv. iii. c. 11, 12, 13. Not satisfied with this, the more potent barons got their territories erected into 'regalities,' with almost every royal prerogative and jurisdiction. Instances of these were frequent in France. Bruss. Ibid. In Scotland, where the power of the feudal nobles became exorbitant, they were very numerous. Historical Law Tracts, vol. i. tract. vi. Even in England, though the authority of the Norman kings circumscribed the jurisdiction of the barons within more narrow limits than in any other feudal kingdom, several counties palatine were erected, into which the king's judges could not enter, and no writ could come in the king's name, until it received the seal of the county palatine. Spelman. Gloss. voc. Comites palatini; Blackstone's Commentaries on the Laws of England, vol. iii. p. 78. These lords of regalities had a right to claim or rescue their vassals from the king's judges, if they assumed any jurisdiction over them. Brussel, ubi supra. In the law of Scotland this privilege was termed the right of 'repledging;' and the frequency of it not only interrupted the course of justice, but gave rise to great disorders in the exercise of it. Hist. Law Tracts, ibid. The jurisdiction of the counties palatine seems to have been productive of like inconveniencies in England.

The remedies provided by princes against the bad effects of these usurpations of the nobles, or incon-

siderate grants of the crown, were various, and gradually applied. Under Charlemagne and his immediate descendants, the regal prerogative still retained great vigour, and the 'duces,' 'comites,' and 'missi dominici,' the former of whom were ordinary and fixed judges, the latter extraordinary and itinerant judges, in the different provinces of their extensive dominions, exercised a jurisdiction coordinate with the barons in some cases, and superior to them in others. Du Cange, vocc. Dux, Comites, et Missi. Murat. Antiq. Dissert. viii. et ix. But under the feeble race of monarchs who succeeded them, the authority of the royal judges declined, and the barons acquired that unlimited jurisdiction which has been described. Louis the sixth of France attempted to revive the function of the 'missi dominici' under the title of 'juges des exempts,' but the barons were become too powerful to bear such an encroachment on their jurisdiction, and he was obliged to desist from employing them. Hainault, Abrégé Chron. tom. ii. p. 730. His successor, as has been observed, had recourse to expedients less alarming. The appeal 'de défaute de droit,' or on account of the refusal of justice, was the first which was attended with any considerable effect. According to the maxims of feudal law, if a baron had not as many vassals as enabled him to try by their peers, the parties who offered to plead in his court, or if he delayed or refused to proceed in the trial, the cause might be carried, by appeal, to the court of the superior lord of whom the baron held, and tried there. De l'Esprit des Loix, liv. xxviii. c. 28. Du Cange, voc. Defectus justitiæ. The number of peers or assessors in the courts of barons was frequently very considerable. It appears from a criminal trial in the court of the viscount de Lautrec, a. d. 1299, that upwards of two hundred persons were present, and assisted in the trial, and voted in passing judgment. Hist. de Langued. par D. D. de Vic et Vaisette, tom. iv. Preuves, p. 114. But as the right

of jurisdiction had been usurped by many inconsiderable barons, they were often unable to hold courts. This gave frequent occasion to such appeals, and rendered the practice familiar. By degrees, such appeals began to be made from the courts of the more powerful barons; and it is evident, from a decision recorded by Brussel, that the royal judges were willing to give countenance to any pretext for them. Traité des Fiefs, tom. i. p. 235. 261. This species of appeal had less effect in abridging the jurisdiction of the nobles, than the appeal on account of the injustice of the sentence. When the feudal monarchs were powerful, and their judges possessed extensive authority, such appeals seem to have been frequent. Capitul. vol. i. p. 175. 180; and they were made in a manner suitable to the rudeness of a simple age. The persons aggrieved resorted to the palace of their sovereign, and with outcries and loud noise called to him for redress. Capitul. lib. iii. c. 59. Chronic. Lawterbergiense, ap. Mencken. Script. German. vol. ii. p. 284, b. In the kingdom of Aragon, the appeals to the 'justiza,' or supreme judge, were taken in such a form as supposed the appellant to be in immediate danger of death, or of some violent outrage; he rushed into the presence of the judge, crying with a loud voice, 'Avi, Avi, Fuerza, Fuerza,' thus imploring, as it were, the instant interposition of that supreme judge in order to save him. Hier. Blanca, Comment. de Rebus Aragon. ap. Script. Hispanic. Pistorii, vol. iii. p. 753. The abolition of the trial by combat facilitated the revival of appeals of this kind. The effects of the subordination which appeals established, in introducing attention, equity, and consistency of decision into courts of judicature, were soon conspicuous; and almost all causes of importance were carried to be finally determined in the king's courts. Brussel, tom. i. 252. Various circumstances which contributed towards the introduction and frequency of such ap-

peals are enumerated, De l'Esprit des Loix, liv. xxviii. c. 27. Nothing, however, was of such effect as the attention which monarchs gave to the constitution and dignity of their courts of justice. It was the ancient custom for the feudal monarchs to preside themselves in their courts, and to administer justice in person. Marculf. lib. i. sect. 25. Murat. Dissert. xxxi. Charlemagne, whilst he was dressing, used to call parties into his presence, and, having heard and considered the subject of litigation, gave judgment concerning it. Eginhartus, Vita Caroli magni, cited by Madox, Hist. of Exchequer, vol. i. p. 91. This trial and decision of causes by the sovereigns themselves could not fail of rendering their courts respectable. St. Louis, who encouraged to the utmost the practice of appeals, revived this ancient custom, and administered justice in person with all the ancient simplicity. "I have often seen the saint," says Joinville, "sit under the shade of an oak in the wood of Vincennes, when all who had any complaint freely approached him. At other times he gave orders to spread a carpet in a garden, and, seating himself upon it, heard the causes that were brought before him." Hist. de St. Louis, p. 13. edit. 1761. Princes of inferior rank, who possessed the right of justice, sometimes dispensed it in person, and presided in their tribunals. Two instances of this occur with respect to the dauphins of Vienne. Hist. du Dauphiné, tom. i. p. 18. tom. ii. p. 257. But as kings and princes could not decide every cause in person, nor bring them all to be determined in the same court; they appointed 'baillis,' with a right of jurisdiction, in different districts of their kingdom. These possessed powers somewhat similar to those of the ancient 'comites.' It was towards the end of the twelfth century, and beginning of the thirteenth, that this office was first instituted in France. Brussel, liv. ii. c. 35. When the king had a court established in different quarters of

his dominions, this invited his subjects to have recourse to it. It was the private interest of the 'baillis,' as well as an object of public policy, to extend their jurisdiction. They took advantage of every defect in the rights of the barons, and of every errour in their proceedings, to remove causes out of their courts, and to bring them under their own cognizance. There was a distinction in the feudal law, and an extremely ancient one, between the high justice, and the low. Capitul. 3. a. d. 812. sect. 4. a. d. 815. sect. 3. Establ. de St. Louis, liv. i. c. 40. Many barons possessed the latter jurisdiction who had no title to the former. The former included the right of trying crimes of every kind, even the highest; the latter was confined to petty trespasses. This furnished endless pretexts for obstructing, restraining, and reviewing the proceedings in the baron courts. Ordon. ii. 457. sect. 25. 458. sect. 29. A regulation of greater importance succeeded the institution of 'baillis.' The king's supreme court or parliament was rendered fixed as to the place, and constant as to the time of its meetings. In France, as well as in the other feudal kingdoms, the king's court of justice was originally ambulatory, followed the person of the monarch, and was held only during some of the great festivals. Philip Augustus, a. d. 1305, rendered it stationary at Paris, and continued its terms during the greater part of the year. Pasquier, Recherches, liv. ii. c. 2 et 3, etc. Ordon. tom. i. p. 366. sect. 62. He and his successors vested extensive powers in that court; they granted the members of it several privileges and distinctions which it would be tedious to enumerate. Pasquier, ibid. Velly, Hist. de France, tom. vii. p. 307. Persons eminent for integrity and skill in law were appointed judges there. Ibid. By degrees, the final decision of all causes of importance was brought into the parliament of Paris, and the other parliaments which administered justice in the king's name, in different provinces of the king-

dom. This jurisdiction, however, the parliament of Paris acquired very slowly, and the great vassals of the crown made violent efforts in order to obstruct the attempts of that parliament to extend its authority. Towards the close of the thirteenth century, Philip the fair was obliged to prohibit his parliament from taking cognizance of certain appeals brought into it from the courts of the count of Bretagne, and to recognise and respect his right of supreme and final jurisdiction. Mémoires pour servir de Preuves à l'Histoire de Bretagne par Morice, tom. i. p. 1037. 1074. Charles the sixth, at the end of the following century, was obliged to confirm the rights of the dukes of Bretagne in still more ample form. Ibid. tom. ii. p. 580, 581. So violent was the opposition of the barons to this right of appeal, which they considered as fatal to their privileges and power, that the authors of the Encyclopédie have mentioned several instances in which barons put to death, or mutilated, such persons as ventured to appeal from the sentences pronounced in their courts, to the parliament of Paris, tom. xii. Art. Parlement, p. 25.

The progress of jurisdiction in the other feudal kingdoms was, in a great measure, similar to that which we have traced in France. In England, the territorial jurisdiction of the barons was both ancient and extensive. Leg. Edw. Conf. N°. 5 and 9. After the Norman conquest it became more strictly feudal; and it is evident from facts recorded in the English history, as well as from the institution of counties palatine, which I have already mentioned, that the usurpations of the nobles in England were not less bold or extensive than those of their contemporaries on the continent. The same expedients were employed to circumscribe or abolish those dangerous jurisdictions. William the conqueror established a constant court in the hall of his palace; from which the four courts now intrusted with the administration

of justice in England took their rise. Henry the second divided his kingdom into six circuits, and sent itinerant judges to hold their courts in them at stated seasons. Blackstone's Commentaries on the Laws of England, vol. iii. p. 57. Justices of the peace were appointed in every county by subsequent monarchs; to whose jurisdiction the people gradually had recourse in many civil causes. The privileges of the counties palatine were gradually limited; with respect to some points they were abolished; and the administration of justice was brought into the king's courts, or before judges of his appointment. The several steps taken for this purpose are enumerated in Dalrymple's History of Feudal Property, chap. vii.

In Scotland the usurpations of the nobility were more exorbitant than in any other feudal kingdom. The progress of their encroachments, and the methods taken by the crown to limit or abolish their territorial and independent jurisdictions, both which I had occasion to consider and explain in a former work, differed very little from those of which I have now given the detail. History of Scotland, vol. i. p. 45[b].

I should perplex myself and my readers in the labyrinth of German jurisprudence, if I were to attempt to delineate the progress of jurisdiction in the empire with a minute accuracy. It is sufficient to observe, that the authority which the aulic council and imperial chamber now possess, took its rise from the same desire of redressing the abuses of territorial jurisdiction, and was acquired in the same manner that the royal courts attained influence in other countries of Europe. All the important facts with respect to both these particulars, may be found in Phil. Datt. de Pace publica Imperii, lib. iv. The capital articles are pointed out in Pfeffel, Abrégé de l'Histoire du Droit public d'Allemagne, p. 556. 581; and in Traité du Droit public de

[b] Vol. i. p. 38 of this edition of Dr. Robertson's works.

l'Empire par M. le Coq de Villeray. The two last treatises are of great authority, having been composed under the eye of M. Schoepflin of Strasburg, one of the ablest public lawyers in Germany.

NOTE XXIV. SECT. I. p. 59, r.

It is not easy to fix with precision the period at which ecclesiastics first began to claim exemption from the civil jurisdiction. It is certain that during the early and purest ages of the church they pretended to no such immunity. The authority of the civil magistrate extended to all persons and to all causes. This fact has not only been clearly established by protestant authors, but is admitted by many Roman catholics of eminence, and particularly by the writers in defence of the liberties of the Gallican church. There are several original papers published by Muratori, which show that, in the ninth and tenth centuries, causes of the greatest importance relating to ecclesiastics were still determined by civil judges. Antiq. Ital. vol. v. Dissert. lxx. Proofs of this are produced likewise by M. Houard, Anciennes Loix des François, etc. vol. i. p. 209. Ecclesiastics did not shake off all at once their subjection to civil courts. This privilege, like their other usurpations, was acquired slowly, and step by step. This exemption seems at first to have been merely an act of complaisance, flowing from veneration for their character. Thus, from a charter of Charlemagne in favour of the church of Mans, a. d. 796, to which M. l'Abbé de Foy refers in his Notice de Diplomes, tom. i. p. 201, that monarch directs his judges, if any difference should arise between the administrators of the revenues of that church and any person whatever, not to summon the administrators to appear in 'mallo publico;' but first of all to meet with them, and to endeavour to accommodate the difference in an amicable manner. This indulgence was, in process of time, improved into a legal exemption; which

was founded on the same superstitious respect of the laity for the clerical character and function. A remarkable instance of this occurs in a charter of Frederic Barbarossa, a. d. 1172, to the monastery of Altenburg. He grants them 'judicium non tantum sanguinolentis plagæ, sed vitæ et mortis;' he prohibits any of the royal judges from disturbing their jurisdiction; and the reason which he gives for this ample concession is, "nam quorum, ex Dei gratia, ratione divini ministerii onus leve est, et jugum suave; nos penitus nolumus illos oppressionis contumelia, vel manu laica, fatigari." Mencken, Script. Rer. Germ. vol. iii. p. 1067.

It is not necessary for illustrating what is contained in the text, that I should describe the manner in which the code of the canon law was compiled, or show that the doctrines in it most favourable to the power of the clergy, are founded on ignorance, or supported by fraud and forgery. The reader will find a full account of these in Gerard. van Mastricht, Historia Juris Ecclesiastici, and in Science du Gouvernement, par M. Réal, tom. vii. c. i. et iii. sect. 2, 3, etc. The history of the progress and extent of ecclesiastical jurisdiction, with an account of the arts which the clergy employed in order to draw causes of every kind into the spiritual courts, is no less curious, and would throw great light upon many of the customs and institutions of the dark ages; but it is likewise foreign from the present subject. Du Cange, in his Glossary, voc. Curia christianitatis, has collected most of the causes with respect to which the clergy arrogated an exclusive jurisdiction, and refers to the authors, or original papers, which confirm his observations. Giannone, in his Civil History of Naples, lib. xix. sect. 3. has ranged these under proper heads, and scrutinizes the pretensions of the church with his usual boldness and discernment. M. Fleury observes, that the clergy multiplied the pretexts for extending the authority of the spiritual courts with so much boldness, that it was soon in their power to

withdraw almost every person and every cause from the jurisdiction of the civil magistrate. Hist. Ecclés. tom. xix. Disc. Prélim. p. 16. But how ill-founded soever the jurisdiction of the clergy may have been, or whatever might be the abuses to which their manner of exercising it gave rise, the principles and forms of their jurisprudence were far more perfect than that which was known in the civil courts. It seems to be certain that ecclesiastics never submitted, during any period in the middle ages, to the laws contained in the codes of the barbarous nations, but were governed entirely by the Roman law. They regulated all their transactions by such of its maxims as were preserved by tradition, or were contained in the Theodosian code, and other books extant among them. This we learn from a custom which prevailed universally in those ages. Every person was permitted to choose among the various codes of laws then in force, that to which he was willing to conform. In any transaction of importance, it was usual for the persons contracting to mention the law to which they submitted, that it might be known how any controversy that should arise between them was to be decided. Innumerable proofs of this occur in the charters of the middle ages. But the clergy considered it as such a valuable privilege of their order to be governed by the Roman law, that when any person entered into holy orders, it was usual for him to renounce the code of laws to which he had been formerly subject, and to declare that he now submitted to the Roman law. "Constat me Johannem clericum, filium quondam Verandi, qui professus sum, ex natione mea, lege vivere Longobardorum, sed tamen, pro honore ecclesiastico, lege nunc videor vivere Romana." Charta, a. d. 1072. "Farulfus presbyter qui professus sum, more sacerdotii mei, lege vivere Romana." Charta, a. d. 1075. Muratori, Antichità Estensi, vol. i. p. 78. See likewise Houard, Anciennes Loix des François, etc. vol. i. p. 203.

The code of the canon law began to be compiled early in the ninth century. Mém. de l'Acad. des Inscript. tom. xviii. p. 346, etc. It was above two centuries after that before any collection was made of those customs, which were the rule of judgments in the courts of the barons. Spiritual judges decided, of course, according to written and known laws: lay judges, left without any fixed guide, were directed by loose traditionary customs. But, besides this general advantage of the canon law, its forms and principles were more consonant to reason, and more favourable to the equitable decision of every point in controversy, than those which prevailed in lay courts. It appears, from Notes xxi. and xxiii. concerning private wars, and the trial by combat, that the whole spirit of ecclesiastical jurisprudence was adverse to those sanguinary customs which were destructive of justice; and the whole force of ecclesiastical authority was exerted to abolish them, and to substitute trials by law and evidence in their room. Almost all the forms in lay courts, which contribute to establish, and continue to preserve order in judicial proceedings, are borrowed from the canon law. Fleury, Instit. du Droit Canon. part iii. c. 6. p. 52. St. Louis, in his Establissemens, confirms many of his new regulations concerning property, and the administration of justice, by the authority of the canon law, from which he borrowed them. Thus, for instance, the first hint of attaching moveables, for the recovery of a debt, was taken from the canon law. Estab. liv. ii. c. 21 et 40. And likewise the 'cessio bonorum,' by a person who was insolvent. Ibid. In the same manner he established new regulations with respect to the effects of persons dying intestate, liv. i. c. 89. These, and many other salutary regulations, the canonists had borrowed from the Roman law. Many other examples might be produced, of more perfect jurisprudence in the canon law than was known in lay courts. For that reason, it was

deemed an high privilege to be subject to ecclesiastical jurisdiction. Among the many immunities, by which men were allured to engage in the dangerous expeditions for the recovery of the Holy Land, one of the most considerable was the declaring such as took the cross to be subject only to the spiritual courts, and to the rules of decision observed in them. See note xiii. and Du Cange, voc. Crucis privilegia.

Note XXV. Sect. I. p. 61, s.

The rapidity with which the knowledge and study of the Roman law spread over Europe is amazing. The copy of the pandects was found at Amalfi, a. d. 1137. Irnerius opened a college of civil law at Bologna a few years after. Giann. Hist. book xi. c. 2. It began to be taught as a part of academical learning in different parts of France before the middle of the century. Vaccarius gave lectures on the civil law at Oxford, as early as the year 1147. A regular system of feudal law, formed plainly in imitation of the Roman code, was composed by two Milanese lawyers about the year 1150. Gratian published the code of canon law, with large additions and emendations, about the same time. The earliest collection of those customs, which served as the rules of decision in the courts of justice, is the 'Assises de Jérusalem.' They were compiled, as the preamble informs us, in the year 1099, and are called 'Jus Consuetudinarium quo regebatur Regnum orientale.' Willerm. Tyr. lib. xix. c. 2. But peculiar circumstances gave occasion to this early compilation. The victorious crusaders settled as a colony in a foreign country, and adventurers from all the different nations of Europe composed this new society. It was necessary, on that account, to ascertain the laws and customs which were to regulate the transactions of business, and the administration of justice among them. But in no country of Europe was there, at that time, any collection of customs, nor had any attempt been made to

render law fixed. The first undertaking of that kind was by Glanville, lord chief justice of England, in his 'Tractatus de Legibus et Consuetudinibus Angliæ,' composed about the year 1181. The Regiam Majestatem in Scotland, ascribed to David the first, seems to be an imitation, and a servile one, of Glanville. Several Scottish antiquaries, under the influence of that pious credulity, which disposes men to assent, without hesitation, to whatever they deem for the honour of their native country, contend zealously that the Regiam Majestatem is a production prior to the treatise of Glanville; and have brought themselves to believe, that a nation in a superior state of improvement borrowed its laws and institutions from one considerably less advanced in its political progress. The internal evidence, were it my province to examine it, by which this theory might be refuted, is, in my opinion, decisive. The external circumstances which have seduced Scottish authors into this mistake, have been explained with so much precision and candour by sir David Dalrymple, in his examination of some of the arguments for the high antiquity of Regiam Majestatem, Edin. 1769, 4to. that it is to be hoped the controversy will not be again revived. Pierre de Fontaines, who tells us that he was the first who had attempted such a work in France, composed his 'Conseil,' which contains an account of the customs of the country of Vermandois, in the reign of St. Louis, which began a. d. 1226. Beaumanoir, the author of the 'Coustumes de Beauvoisis,' lived about the same time. The Establissemens of St. Louis, containing a large collection of the customs which prevailed within the royal domains, were published by the authority of that monarch. As soon as men became acquainted with the advantages of having written customs and laws, to which they could have recourse on every occasion, the practice of collecting them became common. Charles the seventh of France, by an ordinance, a. d. 1453,

appointed the customary laws in every province of France to be collected and arranged. Velley et Villaret, Histoire, tom. xvi. p. 113. His successor, Louis the eleventh, renewed the injunction. But this salutary undertaking hath never been fully executed, and the jurisprudence of the French nation remains more obscure and uncertain than it would have been if these prudent regulations of their monarchs had taken effect. A mode of judicial determination was established in the middle ages, which affords the clearest proof that judges, while they had no other rule to direct their decrees but unwritten and traditionary customs, were often at a loss how to find out the facts and principles, according to which they were bound to decide. They were obliged, in dubious cases, to call a certain number of old men, and to lay the case before them, that they might inform them what was the practice or custom with regard to the point. This was called 'Enqueste par tourbe.' Du Cange, voc. Turba. The effects of the revival of the Roman jurisprudence have been explained by M. de Montesquieu, liv. xxviii. c. 42. and by Mr. Hume, Hist. of England, vol. ii. p. 441. I have adopted many of their ideas. Who can pretend to review any subject which such writers have considered, without receiving from them light and information? At the same time, I am convinced, that the knowledge of the Roman law was not so entirely lost in Europe during the middle ages, as is commonly believed. My subject does not require me to examine this point. Many striking facts with regard to it are collected by Donato Antonio d'Asti, Dell' Uso e Autorità della ragione civile nelle provincie dell' Imperio Occidentale. Nap. 1751. 2 vol. 8vo.

That the civil law is intimately connected with the municipal jurisprudence in several countries of Europe, is a fact so well known that it needs no illustration. Even in England, where the common law is supposed to form a system perfectly distinct from the Roman

code, and although such as apply in that country to the study of the common law boast of this distinction, with some degree of affectation, it is evident that many of the ideas and maxims of the civil law are incorporated into the English jurisprudence. This is well illustrated by the ingenious and learned author of Observations on the Statutes, chiefly the more ancient, 3d edit. p. 76, etc.

Note XXVI. Sect. I. p. 62, u.

The whole history of the middle ages makes it evident, that war was the sole profession of gentlemen, and almost the only object attended to in their education. Even after some change in manners began to take place, and the civil arts of life had acquired some reputation, the ancient ideas with respect to the accomplishments necessary for a person of noble birth continued long in force. In the Mémoires de Fleuranges, p. 9, etc. we have an account of the youthful exercises and occupations of Francis the first, and they were altogether martial and athletic. That father of letters owed his relish for them, not to education, but to his own good sense and good taste. The manners of the superior order of ecclesiastics during the middle ages furnish the strongest proof, that, in some instances, the distinction of professions was not completely ascertained in Europe. The functions and character of the clergy are obviously very different from those of laymen; and among the inferior orders of churchmen, this constituted a distinct character separate from that of other citizens. But the dignified ecclesiastics, who were frequently of noble birth, were above such a distinction; they retained the idea of what belonged to them as gentlemen, and in spite of the decrees of popes, or the canons of councils, they bore arms, led their vassals to the field, and fought at their head in battle. Among them the priesthood was scarcely a separate profession; the military accomplishments which

they thought essential to them as gentlemen, were cultivated; the theological science, and pacific virtues suitable to their spiritual function, were neglected and despised.

As soon as the science of law became a laborious study, and the practice of it a separate profession, such persons as rose to eminence in it obtained honours which had formerly been appropriated to soldiers. Knighthood was the most illustrious mark of distinction during several ages, and conferred privileges to which rank or birth alone were not entitled. To this high dignity persons eminent for their knowledge of law were advanced, and were thereby placed on a level with those whom their military talents had rendered conspicuous. 'Miles justitiæ, miles literatus,' became common titles. Matthew Paris mentions such knights as early as a. d. 1251. If a judge attained a certain rank in the courts of justice, that alone gave him a right to the honour of knighthood. Pasquier, Recherches, liv. xi. c. 16. p. 130. Dissertations Historiques sur la Chevalerie par Honoré de Sainte Marie, p. 164, etc. A profession that led to offices, which ennobled the persons who held them, grew into credit, and the people of Europe became accustomed to see men rise to eminence by civil as well as military talents.

Note XXVII. Sect. I. p. 65, x.

The chief intention of these notes, was to bring at once under the view of my readers, such facts and circumstances as tend to illustrate or confirm what is contained in that part of the history to which they refer. When these lay scattered in many different authors, and were taken from books not generally known, or which many of my readers might find it disagreeable to consult, I thought it would be of advantage to collect them together. But when every thing necessary for the proof or illustration of my narrative or reasoning may be found in any one book which is generally

known, or deserves to be so, I shall satisfy myself with referring to it. This is the case with respect to chivalry. Almost every fact which I have mentioned in the text, together with many other curious and instructive particulars concerning this singular institution, may be found in Mémoires sur l'ancienne Chevalerie considérée comme un Establissement politique et militaire, par M. de la Curne de St. Palaye.

Note XXVIII. Sect. I. p. 69, y.

The subject of my inquiries does not call me to write a history of the progress of science. The facts and observations which I have produced are sufficient to illustrate the effects of its progress upon manners and the state of society. While science was altogether extinct in the western parts of Europe, it was cultivated in Constantinople and other parts of the Grecian empire. But the subtile genius of the Greeks turned almost entirely to theological disputation. The Latins borrowed that spirit from them; and many of the controversies which still occupy and divide theologians, took their rise among the Greeks, from whom the other Europeans derived a considerable part of their knowledge. See the testimony of Æneas Sylvius, ap. Conringium de Antiq. Academicis, p. 43. Histoire Littéraire de France, tom. vii. p. 113, etc. tom. ix. p. 151, etc. Soon after the empire of the caliphs was established in the east, some illustrious princes arose among them, who encouraged science. But when the Arabians turned their attention to the literature cultivated by the ancient Greeks and Romans, the chaste and correct taste of their works of genius appeared frigid and unanimated to a people of a more warm imagination. Though they could not admire the poets and historians of Greece or of Rome, they were sensible of the merit of their philosophers. The operations of the intellect are more fixed and uniform than those of the fancy or taste. Truth makes an impression nearly the same in

every place; the ideas of what is beautiful, elegant, or sublime, vary in different climates. The Arabians, though they neglected Homer, translated the most eminent of the Greek philosophers into their own language; and, guided by their precepts and discoveries, applied themselves with great ardour to the study of geometry, astronomy, medicine, dialectics, and metaphysics. In the three former they made considerable and useful improvements, which have contributed not a little to advance those sciences to that high degree of perfection which they have attained. In the two latter, they chose Aristotle for their guide; and refining on the subtile and distinguishing spirit which characterizes his philosophy, they rendered it, in a great degree, frivolous or unintelligible. The schools established in the east for teaching and cultivating these sciences were in high reputation. They communicated their love of science to their countrymen, who conquered Africa and Spain; and the schools instituted there were little inferior in fame to those in the east. Many of the persons who distinguished themselves by their proficiency in science during the twelfth and thirteenth centuries, were educated among the Arabians. Bruckerus collects many instances of this, Histor. Philos. vol. iii. p. 681, etc. Almost all the men eminent for science during several centuries, if they did not resort in person to the schools in Africa and Spain, were instructed in the philosophy of the Arabians. The first knowledge of the Aristotelian philosophy in the middle ages was acquired by translations of Aristotle's works out of the Arabic. The Arabian commentators were deemed the most skilful and authentic guides in the study of his system. Conring. Antiq. Acad. Diss. iii. p. 95, etc. Supplem. p. 241, etc. Murat. Antiquit. Ital. vol. iii. p. 932, etc. From them the schoolmen derived the genius and principles of their philosophy, which contributed so much to retard the progress of true science.

The establishment of colleges or universities is a remarkable æra in literary history. The schools in cathedrals and monasteries confined themselves chiefly to the teaching of grammar. There were only one or two masters employed in that office. But in colleges, professors were appointed to teach all the different parts of science. The course or order of education was fixed. The time that ought to be allotted to the study of each science was ascertained. A regular form of trying the proficiency of students was prescribed; and academical titles and honours were conferred on such as acquitted themselves with approbation. A good account of the origin and nature of these is given by Seb. Bacmeisterus, Antiquitates Rostochienses, sive, Historia Urbis et Academiæ Rostoch. ap. Monumenta inedita Rer. Germ. per E. J. de Westphalen, vol. iii. p. 781. Lips. 1743. The first obscure mention of these academical degrees in the university of Paris, from which the other universities in Europe have borrowed most of their customs and institutions, occurs a. d. 1215. Crevier, Hist. de l'Univ. de Paris, tom. i. p. 296, etc. They were completely established a. d. 1231. Ibid. 248. It is unnecessary to enumerate the several privileges to which bachelors, masters, and doctors were entitled. One circumstance is sufficient to demonstrate the high degree of estimation in which they were held. Doctors in the different faculties contended with knights for precedence, and the dispute was terminated in many instances by advancing the former to the dignity of knighthood, the high prerogatives of which I have mentioned. It was even asserted, that a doctor had a right to that title without creation. Bartolus taught "doctorem actualiter regentem in jure civili per decennium effici militem ipso facto." Honoré de St. Marie, Dissert. p. 165. This was called 'chevalerie de lectures,' and the persons advanced to that dignity, 'milites clerici.' These new establishments for education, together with the extra-

ordinary honours conferred on learned men, greatly increased the number of scholars. In the year 1262, there were ten thousand students in the university of Bologna; and it appears from the history of that university, that law was the only science taught in it at that time. In the year 1340, there were thirty thousand in the university of Oxford. Speed's Chron. ap. Anderson's Chronol. Deduction of Commerce, vol. i. p. 172. In the same century, ten thousand persons voted in a question agitated in the university of Paris; and as graduates alone were admitted to that privilege, the number of students must have been very great. Velley, Hist. de France, tom. xi. p. 147. There were, indeed, few universities in Europe at that time; but such a number of students may nevertheless be produced as a proof of the extraordinary ardour with which men applied to the study of science in those ages; it shows, likewise, that they already began to consider other professions beside that of a soldier as honourable and useful.

Note XXIX. Sect. I. p. 70, z.

The great variety of subjects which I have endeavoured to illustrate, and the extent of this upon which I now enter, will justify my adopting the words of M. de Montesquieu, when he begins to treat of commerce. "The subject which follows would require to be discussed more at large; but the nature of this work does not permit it. I wish to glide on a tranquil stream; but I am hurried along by a torrent."

Many proofs occur in history of the little intercourse between nations during the middle ages. Towards the close of the tenth century, count Bouchard, intending to found a monastery at St. Maur des Fosses, near Paris, applied to an abbot of Clugny in Burgundy, famous for his sanctity, entreating him to conduct the monks thither. The language in which he addressed that holy man is singular: He tells him, that he had

undertaken the labour of such a great journey; that he was fatigued with the length of it, therefore, hoped to obtain his request, and that his journey into such a distant country should not be in vain. The answer of the abbot is still more extraordinary: He refused to comply with his desire, as it would be extremely fatiguing to go along with him into a strange and unknown region. Vita Burchardi venerabilis Comitis, ap. Bouquet Rec. des Hist. vol. x. p. 351. Even so late as the beginning of the twelfth century, the monks of Ferrieres, in the diocese of Sens, did not know that there was such a city as Tournay in Flanders; and the monks of St. Martin of Tournay were equally unacquainted with the situation of Ferrieres. A transaction, in which they were both concerned, made it necessary for them to have some intercourse. The mutual interest of both monasteries prompted each to find out the situation of the other. After a long search, which is particularly described, the discovery was made by accident. Herimannus Abbas, De Restauratione St. Martini Tornacensis ap. Dacher. Spicil. vol. xii. p. 400. The ignorance of the middle ages with respect to the situation and geography of remote countries was still more remarkable. The most ancient geographical chart which now remains as a monument of the state of that science in Europe during the middle ages, is found in a manuscript of the Chronique de St. Denys. There the three parts of the earth then known are so represented, that Jerusalem is placed in the middle of the globe, and Alexandria appears to be as near to it as Nazareth. Mém. de l'Acad. des Belles Lettres, tom. xvi. p. 185. There seem to have been no inns or houses of entertainment for the reception of travellers during the middle ages. Murat. Antiq. Ital. vol. iii. p. 581, etc. This is a proof of the little intercourse which took place between different nations. Among people whose manners are simple, and who are seldom visited by strangers, hospitality is a virtue of the first

rank. This duty of hospitality was so necessary in that state of society which took place during the middle ages, that it was not considered as one of those virtues which men may practise or not, according to the temper of their minds, and the generosity of their hearts. Hospitality was enforced by statutes, and such as neglected this duty were liable to punishment. "Quicunque hospiti venienti lectum aut focum negaverit, trium solidorum inlatione mulctetur." Leg. Burgund. tit. xxxviii. sect. i. "Si quis homini aliquo pergenti in itinere mansionem vetaverit, sexaginta solidos componat in publico." Capitul. lib. vi. sect. 82. This increase of the penalty, at a period so long after that in which the laws of the Burgundians were published, and when the state of society was much improved, is very remarkable. Other laws of the same purport are collected by Jo. Fred. Polac. Systema Jurisprud. Germanicæ, Lips. 1733, p. 75. The laws of the Slavi were more rigorous than any that he mentions; they ordained that the moveables of an inhospitable person should be confiscated, and his house burnt. They were even so solicitous for the entertainment of strangers, that they permitted the landlord to steal for the support of his guest. "Quod noctu furatus fueris, cras appone hospitibus." Rerum Mecleburgicar. lib. viii. a Mat. Jo. Beehr. Lips. 1751, p. 50. In consequence of these laws, or of the state of society which made it proper to enact them, hospitality abounded while the intercourse among men was inconsiderable, and secured the stranger a kind reception under every roof where he chose to take shelter. This, too, proves clearly, that the intercourse among men was rare; for as soon as this became frequent, what was a pleasure became a burthen, and the entertaining of travellers was converted into a branch of commerce.

But the laws of the middle ages afford a proof still more convincing of the small intercourse between different nations. The genius of the feudal system, as

well as the spirit of jealousy which always accompanies ignorance, concurred in discouraging strangers from settling in any new country. If a person removed from one province in a kingdom to another, he was bound within a year and a day to acknowledge himself the vassal of the baron in whose estate he settled; if he neglected to do so, he became liable to a penalty; and, if at his death he neglected to leave a certain legacy to the baron within whose territory he had resided, all his goods were confiscated. The hardships imposed on foreigners settling in a country, were still more intolerable. In more early times, the superior lord of any territory in which a foreigner settled, might seize his person, and reduce him to servitude. Very striking instances of this occur in the history of the middle ages. The cruel depredations of the Normans in the ninth century, obliged many inhabitants of the maritime provinces of France to fly into the interior parts of the kingdom. But instead of being received with that humanity to which their wretched condition entitled them, they were reduced to a state of servitude. Both the civil and ecclesiastical powers found it necessary to interpose, in order to put a stop to this barbarous practice. Potgiesser. de Statu Servor. lib. i. c. 1. sect. 16. In other countries, the laws permitted the inhabitants of the maritime provinces to reduce such as were shipwrecked on their coast to servitude. Ibid. sect. 17. This barbarous custom prevailed in many countries of Europe. The practice of seizing the goods of persons who had been shipwrecked, and of confiscating them as the property of the lord on whose manor they were thrown, seems to have been universal. De Westphalen, Monum. inedita Rer. Germ. vol. iv. p. 907, etc. and Du Cange, voc. Laganum. Beehr. Rer. Mecleb. lib. p. 512. Among the ancient Welsh, three sorts of persons, a madman, a stranger, and a leper, might be killed with impunity. Leges Hoel Dda, quoted in Observat. on the Statutes, chiefly the more

ancient, p. 22. M. de Laurière produces several ancient deeds which prove, that, in different provinces of France, strangers became the slaves of the lord on whose lands they settled. Glossaire du Droit François, art. Aubaine, p. 92. Beaumanoir says, "that there are several places in France, in which if a stranger fixes his residence for a year and day, he becomes the slave of the lord of the manor." Coust. de Beauv. ch. 45. p. 254. As a practice so contrary to humanity could not subsist long, the superior lords found it necessary to rest satisfied, instead of enslaving aliens, with levying certain annual taxes upon them, or imposing upon them some extraordinary duties or services. But when any stranger died, he could not convey his effects by will; and all his real as well as personal estate fell to the king, or to the lord of the barony, to the exclusion of his natural heirs. This is termed in France 'droit d'aubaine.' Préf. de Laurière, Ordon. tom. i. p. 15. Brussel, tom. ii. p. 944. Du Cange, voc. Albani. Pasquier, Recherches, p. 367. This practice of confiscating the effects of strangers upon their death was very ancient. It is mentioned, though very obscurely, in a law of Charlemagne, a. d. 813. Capitul. Baluz. p. 507. sect. 5. Not only persons who were born in a foreign country were subject to the 'droit d'aubaine,' but in some countries such as removed from one diocese to another, or from the lands of one baron to another. Brussel, vol. ii. p. 947. 949. It is hardly possible to conceive any law more unfavourable to the intercourse between nations. Something similar to it, however, may be found in the ancient laws of every kingdom in Europe. With respect to Italy, see Murat. Ant. vol. ii. p. 14. As nations advanced in improvement, this practice was gradually abolished. It is no small disgrace to the French jurisprudence, that this barbarous, inhospitable custom should have so long remained among a people so highly civilized.

The confusion and outrage which abounded under a feeble form of government, incapable of framing or executing salutary laws, rendered the communication between the different provinces of the same kingdom extremely dangerous. It appears from a letter of Lupus, abbot of Ferrieres, in the ninth century, that the highways were so much infested by banditti, that it was necessary for travellers to form themselves into companies or caravans, that they might be safe from the assaults of robbers. Bouquet, Recueil des Hist. vol. vii. p. 515. The numerous regulations published by Charles the bald in the same century, discover the frequency of these disorders; and such acts of violence were become so common, that by many they were hardly considered as criminal. For this reason the inferior judges, called 'centenarii,' were required to take an oath, that they would neither commit any robbery themselves, nor protect such as were guilty of that crime. Capitul. edit. Baluz. vol. ii. p. 63. 68. The historians of the ninth and tenth centuries give pathetic descriptions of these disorders. Some remarkable passages to this purpose are collected by Mat. Jo. Beehr. Rer. Mecleb. lib. viii. p. 603. They became so frequent and audacious, that the authority of the civil magistrate was unable to repress them. The ecclesiastical jurisdiction was called in to aid it. Councils were held with great solemnity, the bodies of the saints were brought thither, and, in presence of their sacred reliques, anathemas were denounced against robbers, and other violaters of the public peace. Bouquet, Recueil des Hist. tom. x. p. 360. 431, 536. One of these forms of excommunication, issued a. d. 988, is still preserved, and is so singular, and composed with eloquence of such a peculiar kind, that it will not, perhaps, be deemed unworthy of a place here. After the usual introduction, and mentioning the outrage which gave occasion to the anathema, it runs thus: 'Obtenebrescant oculi vestri, qui concupiverunt; arescant ma-

nus, quæ rapuerunt; debilitentur omnia membra, quæ adjuverunt. Semper laboretis, nec requiem inveniatis, fructuque vestri laboris privemini. Formidetis, et paveatis, a facie persequentis et non persequentis hostis, ut tabescendo deficiatis. Sit portio vestra cum Juda traditore Domini, in terra mortis et tenebrarum; donec corda vestra ad satisfactionem plenam convertantur.—Ne cessent a vobis hæ maledictiones, scelerum vestrorum persecutrices, quamdiu permanebitis in peccato pervasionis. Amen, Fiat, Fiat." Bouquet, ibid. p. 517.

Note XXX. Sect. I. p. 74, a.

With respect to the progress of commerce which I have described, p. 70, etc. [c], it may be observed that the Italian states carried on some commerce with the cities of the Greek empire, as early as the age of Charlemagne, and imported into their own country the rich commodities of the east. Murat. Antiq. Ital. vol. ii. p. 882. In the tenth century, the Venetians had opened a trade with Alexandria in Egypt. Ibid. The inhabitants of Amalfi and Pisa had likewise extended their trade to the same ports. Murat. Ib. p. 884, 885. The effects of the crusades in increasing the wealth and commerce of the Italian states, and particularly that which they carried on with the east, I have explained in page 26 [d]. They not only imported the Indian commodities from the east, but established manufactures of curious fabric in their own country. Several of these are enumerated by Muratori, in his Dissertations concerning the 'arts' and the 'weaving' of the middle ages. Antiq. Ital. vol. ii. p. 349. 399. They made great progress, particularly in the manufacture of silk, which had long been peculiar to the eastern provinces of Asia. Silk stuffs were of such high price in ancient Rome, that only a few persons of the first rank were able to purchase them. Under Aurelian,

[c] Vol. iii. of this edition of Dr. Robertson's works. [d] Ibid.

a. d. 270, a pound of silk was equal in value to a pound of gold. 'Absit ut auro fila pensentur. Libra enim auri tunc libra serici fuit.' Vopiscus in Aureliano. Justinian, in the sixth century, introduced the art of rearing silkworms into Greece, which rendered the commodity somewhat more plentiful, though still it was of such great value, as to remain an article of luxury or magnificence, reserved only for persons of the first order, or for public solemnities. Roger the first, king of Sicily, about the year 1130, carried off a number of artificers in the silk trade from Athens, and, settling them in Palermo, introduced the culture of silk into his kingdom, from which it was communicated to other parts of Italy. Giannon. Hist. of Naples, b. xi. c. 7. This seems to have rendered silk so common, that, about the middle of the fourteenth century, a thousand citizens of Genoa appeared in one procession clad in silk robes. Sugar is likewise a production of the east. Some plants of the sugar-cane were brought from Asia; and the first attempt to cultivate them in Sicily was made about the middle of the twelfth century. From thence they were transplanted into the southern provinces of Spain. From Spain they were carried to the Canary and Madeira isles, and at length into the new world. Ludovico Guicciardini, in enumerating the goods imported into Antwerp, about the year 1500, mentions the sugar which they received from Spain and Portugal as a considerable article. He describes that sugar as the product of the Madeira and Canary islands. Descritt. de' Paesi Bassi, p. 180, 181. The sugar-cane was introduced into the West Indies before that time; but the cultivation of it was not so improved, or so extensive, as to furnish an article of much consequence in commerce. In the middle ages, though sugar was not raised in such quantities, or employed for so many purposes, as to become one of the common necessaries of life, it appears to have

been a considerable article in the commerce of the Italian states.

These various commodities with which the Italians furnished the other nations of Europe, procured them a favourable reception in every kingdom. They were established in France in the thirteenth century with most extensive immunities. They not only obtained every indulgence favourable to their commerce, but personal rights and privileges were granted to them, which the natives of the kingdom did not enjoy. Ordon. tom. iv. p. 668. By a special proviso, they were exempted from the droit d'aubaine. Ibid. p. 670. As the Lombards, a name frequently given to all Italian merchants in many parts of Europe, engrossed the trade of every kingdom in which they settled, they became masters of its cash. Money, of course, was in their hands not only a sign of the value of other commodities, but became an object of commerce itself. They dealt largely as bankers. In an ordinance, a. d. 1295, we find them styled 'mercatores' and 'campsores.' They carried on this as well as other branches of their commerce with somewhat of that rapacious spirit which is natural to monopolizers, who are not restrained by the competition of rival traders. An absurd opinion, which prevailed in the middle ages, was, however, in some measure, the cause of their exorbitant demands, and may be pleaded in apology for them. Trade cannot be carried on with advantage, unless the persons who lend a sum of money are allowed a certain premium for the use of it, as a compensation for the risk which they run in permitting another to traffic with their stock. This premium is fixed by law in all commercial countries, and is called the legal interest of money. But the fathers of the church had preposterously applied the prohibitions of usury in scripture to the payment of legal interest, and condemned it as a sin. The schoolmen, misled by

Aristotle, whose sentiments they followed implicitly, and without examination, adopted the same errour, and enforced it. Blackstone's Commentaries on the Laws of England, vol. ii. p. 455. Thus the Lombards found themselves engaged in a traffic which was every where deemed criminal and odious. They were liable to punishment if detected. They were not satisfied, therefore, with that moderate premium, which they might have claimed if their trade had been open and authorized by law. They exacted a sum proportional to the danger and infamy of a discovery. Accordingly, we find that it was usual for them to demand twenty per cent. for the use of money in the thirteenth century. Murat. Antiq. Ital. vol. i. p. 893. About the beginning of that century, the countess of Flanders was obliged to borrow money in order to pay her husband's ransom. She procured the sum requisite either from Italian merchants or from Jews. The lowest interest which she paid to them was above twenty per cent. and some of them exacted near thirty. Martene and Durand. Thesaur. Anecdotorum, vol. i. p. 886. In the fourteenth century, a. d. 1311, Philip the fourth fixed the interest which might be legally exacted in the fairs of Champagne at twenty per cent. Ordon. tom. i. p. 484. The interest of money in Aragon was somewhat lower. James the first, a. d. 1242, fixed it by law at eighteen per cent. Petr. de Marca, Marca sive Limes Hispan. App. 1433. As late as the year 1490, it appears that the interest of money in Placentia was at the rate of forty per cent. This is the more extraordinary, because at that time the commerce of the Italian states was become considerable. Memorie Storiche di Piacenza, tom. viii. p. 104. Piac. 1760. It appears from Lud. Guicciardini, that Charles the fifth had fixed the rate of interest in his dominions in the Low Countries at twelve per cent. and at the time when he wrote, about the year 1560, it was not uncommon to exact more than that sum. He com-

plains of this as exorbitant, and points out its bad effects both on agriculture and commerce. Descritt. de' Paesi Bassi, p. 172. This high interest of money is alone proof that the profits on commerce were exorbitant; and that it was not carried on to great extent. The Lombards were likewise established in England in the thirteenth century, and a considerable street in the city of London still bears their name. They enjoyed great privileges, and carried on an extensive commerce, particularly as bankers. See Anderson's Chronol. Deduction, vol. i. p. 137. 160. 204. 231, where the statutes or other authorities which confirm this are quoted. But the chief mart for Italian commodities was at Bruges. Navigation was then so imperfect, that to sail from any port in the Baltic, and to return again, was a voyage too great to be performed in one summer. For that reason a magazine or storehouse, half-way between the commercial cities in the north, and those in Italy, became necessary. Bruges was pitched upon as the most convenient station. That choice introduced vast wealth into the Low Countries. Bruges was at once the staple for English wool; for the woollen and linen manufactures of the Netherlands; for the naval stores and other bulky commodities of the north; and for the Indian commodities, as well as domestic productions imported by the Italian states. The extent of its commerce in Indian goods with Venice alone, appears from one fact. In the year 1318, five Venetian galeasses laden with Indian commodities arrived at Bruges, in order to dispose of their cargoes at the fair. These galeasses were vessels of very considerable burthen. L. Guic. Descritt. de' Paesi Bassi, p. 174. Bruges was the greatest emporium in all Europe. Many proofs of this occur in the historians and records of the thirteenth and fourteenth centuries. But, instead of multiplying quotations, I shall refer my readers to Anderson, vol. i. p. 12. 137. 213. 246, etc. The nature of this work

prevents me from entering into any more minute detail, but there are some detached facts, which give an high idea of the wealth both of the Flemish and Italian commercial states. The duke of Brabant contracted his daughter to the Black Prince, son of Edward the third of England, a. d. 1339, and gave her a portion which we may reckon to be of equal value with three hundred thousand pounds of our present money. Rymer's Fœdera, vol. v. p. 113. John Galeazzo Visconti, duke of Milan, concluded a treaty of marriage between his daughter and Lionel, duke of Clarence, Edward's third son, a. d. 1367, and granted her a portion equal to two hundred thousand pounds of our present money. Rymer's Fœder. vol. vi. p. 547. These exorbitant sums, so far exceeding what was then granted by the most powerful monarchs, and which appear extraordinary even in the present age, when the wealth of Europe is so much increased, must have arisen from the riches which flowed into those countries from their extensive and lucrative commerce. The first source of wealth to the towns situated on the Baltic sea seems to have been the herring fishery; the shoals of herrings frequenting at that time the coasts of Sweden and Denmark, in the same manner as they now resort to the British coasts. The effects of this fishery are thus described by an author of the thirteenth century. The Danes, says he, who were formerly clad in the poor garb of sailors, are now clothed in scarlet, purple, and fine linen. For they abound with wealth flowing from their annual fishery on the coast of Schonen; so that all nations resort to them, bringing their gold, silver, and precious commodities, that they may purchase herrings, which the divine bounty bestows upon them. Arnoldus Lubecensis ap. Conring. de Urbib. German. sect. 87.

The Hanseatic league is the most powerful commercial confederacy known in history. Its origin towards the close of the twelfth century, and the objects

of its union, are described by Knipschildt, Tractatus Historico-Politico-Juridicus de Juribus Civitat. Imper. lib. i. cap. 4. Anderson has mentioned the chief facts with respect to their commercial progress, the extent of the privileges which they obtained in different countries, their successful wars with several monarchs, as well as the spirit and zeal with which they contended for those liberties and rights without which it is impossible to carry on commerce to advantage. The vigorous efforts of a society of merchants attentive only to commercial objects, could not fail of diffusing new and more liberal ideas concerning justice and order in every country of Europe where they settled.

In England, the progress of commerce was extremely slow; and the causes of this are obvious. During the Saxon heptarchy, England, split into many petty kingdoms, which were perpetually at variance with each other; exposed to the fierce incursions of the Danes, and other northern pirates; and sunk in barbarity and ignorance, was in no condition to cultivate commerce, or to pursue any system of useful and salutary policy. When a better prospect began to open by the union of the kingdom under one monarch, the Norman conquest took place. This occasioned such a violent shock, as well as such a sudden and total revolution of property, that the nation did not recover from it during several reigns. By the time that the constitution began to acquire some stability, and the English had so incorporated with their conquerors as to become one people, the nation engaged with no less ardour than imprudence in support of the pretensions of their sovereigns to the crown of France, and long wasted its vigour and genius in its wild efforts to conquer that kingdom. When by ill success, and repeated disappointments, a period was at last put to this fatal frenzy, and the nation, beginning to enjoy some repose, had leisure to breathe and to gather new strength, the destructive wars between

the houses of York and Lancaster broke out, and involved the kingdom in the worst of all calamities. Thus, besides the common obstructions of commerce occasioned by the nature of the feudal government, and the state of manners during the middle ages, its progress in England was retarded by peculiar causes. Such a succession of events adverse to the commercial spirit was sufficient to have checked its growth, although every other circumstance had favoured it. The English were accordingly one of the last nations in Europe who availed themselves of those commercial advantages which were natural or peculiar to their country. Before the reign of Edward the third, all the wool of England, except a small quantity wrought into coarse cloths for home consumption, was sold to the Flemings or Lombards, and manufactured by them. Though Edward, a. d. 1326, began to allure some of the Flemish weavers to settle in England, it was long before the English were capable of fabricating cloth for foreign markets, and the export of unwrought wool still continued to be the chief article of their commerce. Anderson, passim. All foreign commodities were brought into England by the Lombards or Hanseatic merchants. The English ports were frequented by ships both from the north and south of Europe, and they tamely allowed foreigners to reap all the profits arising from the supply of their wants. The first commercial treaty of England on record, is that with Haquin, king of Norway, a. d. 1217. Anders. vol. i. p. 108. But the English did not venture to trade in their own ships to the Baltic until the beginning of the fourteenth century. Ibid. p. 151. It was after the middle of the fifteenth, before they sent any ship into the Mediterranean. Ibid. p. 177. Nor was it long before this period that their vessels began to visit the ports of Spain or Portugal. But though I have pointed out the slow progress of the English commerce, as a fact little attended to, and yet meriting

consideration; the concourse of foreigners to the ports of England, together with the communication among all the different countries in Europe, which went on increasing from the beginning of the twelfth century, is sufficient to justify all the observations and reasonings in the text concerning the influence of commerce on the state of manners and of society.

Note XXXI. Sect. III. p. 137, q.

I have not been able to discover the precise manner in which the justiza was appointed. Among the claims of the 'junta' or 'union' formed against James the first, a. d. 1264, this was one; that the king should not nominate any person to be justiza, without the consent or approbation of the 'ricos hombres,' or nobles. Zurita, Anales de Aragon, vol. i. p. 180. But the king, in his answer to their remonstrance, asserts, "that it was established by immemorial practice, and was conformable to the laws of the kingdom, that the king, in virtue of his royal prerogative, should name the justiza." Zurita, Ibid. p. 181. Blanca, p. 656. From another passage in Zurita, it appears, that while the Aragonese enjoyed the privilege of 'the union,' i. e. the power of confederating against their sovereign as often as they conceived that he had violated any of their rights and immunities, the justiza was not only nominated by the king, but held his office during the king's pleasure. Nor was this practice attended with any bad effects, as the privilege of the union was a sufficient and effectual check to any abuse of the royal prerogative. But when the privilege of the union was abolished, as dangerous to the order and peace of society, it was agreed that the justiza should continue in office during life. Several kings, however, attempted to remove justizas who were obnoxious to them, and they sometimes succeeded in the attempt. In order to guard against this encroachment, which would have destroyed the intention of the institution,

and have rendered the justiza the dependant and tool of the crown, instead of the guardian of the people, a law was enacted in the cortes, a. d. 1442, ordaining that the justiza should continue in office during life, and should not be removed from it, unless by the authority of the cortes. Fueros y Observancias del Reyno de Arag. lib. i. p. 22. By former laws the person of the justiza had been declared sacred, and he was responsible only to the cortes. Ibid. p. 15, b. Zurita and Blanca, who both published their histories while the justiza of Aragon retained the full exercise of his privileges and jurisdiction, have neglected to explain several circumstances with regard to the office of that respectable magistrate, because they addressed their works to their countrymen, who were well acquainted with every particular concerning the functions of a judge, to whom they looked up as to the guardian of their liberties. It is vain to consult the later historians of Spain, about any point with respect to which the excellent historians whom I have named are silent. The ancient constitution of their country was overturned, and despotism established on the ruin of its liberties, when the writers of this and the preceding century composed their histories; and on that account they had little curiosity to know the nature of those institutions to which their ancestors owed the enjoyment of freedom, or they were afraid to describe them with much accuracy. The spirit with which Mariana, his continuator Miniana, and Ferreras, write their histories, is very different from that of the two historians of Aragon, from whom I have taken my account of the constitution of that kingdom.

Two circumstances concerning the justiza, besides those which I have mentioned in the text, are worthy of observation, 1. None of the ricos hombres, or noblemen of the first order, could be appointed justiza. He was taken out of the second class of cavalleros, who seem to have been nearly of the same condition or

rank with gentlemen or commoners in Great Britain. Fueros y Observanc. del Reyno, etc. lib. i. p. 21, b. The reason was: By the laws of Aragon, the ricos hombres were not subject to capital punishment; but as it was necessary for the security of liberty, that the justiza should be accountable for the manner in which he executed the high trust reposed in him, it was a powerful restraint upon him to know that he was liable to be punished capitally. Blanca, p. 657. 756. Zurita, tom. ii. p. 229. Fueros y Observanc. lib. ix. p. 182, b. 183. It appears too from many passages in Zurita, that the justiza was appointed to check the domineering and oppressive spirit of the nobles, as well as to set bounds to the power of the monarch, and therefore he was chosen from an order of citizens equally interested in opposing both.

2. A magistrate possessed of such vast powers as the justiza, might have exercised them in a manner pernicious to the state, if he himself had been subject to no control. A constitutional remedy was on that account provided against this danger. Seventeen persons were chosen by lot in each meeting of the cortes. These formed a tribunal, called the court of inquisition into the office of justiza. This court met at three stated terms in each year. Every person had liberty of complaining to it of any iniquity or neglect of duty in the justiza, or in the inferior judges who acted in his name. The justiza and his deputies were called to answer for their conduct. The members of the court passed sentence by ballot. They might punish by degradation, confiscation of goods, or even with death. The law which erected this court, and regulated the form of its procedure, was enacted a. d. 1461. Zurita, Anales, iv. p. 102. Blanca, Comment. Rer. Aragon, p. 770. Previous to this period, inquiry was made into the conduct of the justiza, though not with the same formality. He was, from the first institution of the office, subject to the review of the cortes. The constant

dread of such an impartial and severe inquiry into his behaviour, was a powerful motive to the vigilant and faithful discharge of his duty. A remarkable instance of the authority of the justiza, when opposed to that of the king, occurs in the year 1386. By the constitution of Aragon, the eldest son or heir apparent of the crown possessed considerable power and jurisdiction in the kingdom. Fueros y Observanc. del Reyno de Arag. lib. i. p. 16. Peter the fourth, instigated by a second wife, attempted to deprive his son of this, and enjoined his subjects to yield him no obedience. The prince immediately applied to the justiza; "the safeguard and defence," says Zurita, "against all violence and oppression." The justiza granted him the 'firma de derecho,' the effect of which was, that, upon his giving surety to appear in judgment, he could not be deprived of any immunity or privilege which he possessed, but in consequence of a legal trial before the justiza, and of a sentence pronounced by him. This was published throughout the kingdom; and notwithstanding the proclamation in contradiction to this which had been issued by the king, the prince continued in the exercise of all his rights, and his authority was universally recognised. Zurita, Anales de Aragon, tom. ii. p. 385.

Note XXXII. Sect. III. p. 138, s.

I have been induced, by the concurring testimony of many respectable authors, to mention this as the constitutional form of the oath of allegiance, which the Aragonese took to their sovereigns. I must acknowledge, however, that I have not found this singular oath in any Spanish author whom I have had an opportunity of consulting. It is mentioned neither by Zurita, nor Blanca, nor Argensola, nor Sayas, who were all historiographers appointed by the cortes of Aragon to record the transactions of the kingdom. All these writers possess a merit, which is very rare among

historians. They are extremely accurate in tracing the progress of the laws and constitution of their country. Their silence with respect to this, creates some suspicion concerning the genuineness of the oath. But as it is mentioned by so many authors, who produce the ancient Spanish words in which it is expressed, it is probable that they have taken it from some writer of credit, whose works have not fallen into my hands. The spirit of the oath is perfectly agreeable to the genius of the Aragonese constitution. Since the publication of the first edition, the learned M. Totze, professor of history at Batzow in the dutchy of Mecklenburg, has been so good as to point out to me a Spanish author of great authority, who has published the words of this oath. It is Antonio Perez, a native of Aragon, secretary to Philip the second. The words of the oath are: "Nos que valemos tanto como vos, os hazemos nuestro rey y señor, con tal que nos guardeys nuestros fueros, y libertades, y si No, No." Las Obras y Relaciones de Ant. Perez. 8vo. por Juan de la Planche 1631, p. 143.

The privilege of union which I have mentioned in the preceding note, and alluded to in the text, is indeed one of the most singular which could take place in a regular government, and the oath that I have quoted expresses nothing more than this constitutional privilege entitled the Aragonese to perform. If the king or his ministers violated any of the laws or immunities of the Aragonese, and did not grant immediate redress, in consequence of their representations and remonstrances, the nobles of the first rank, or 'ricos hombres de natura, y de mesnada,' the equestrian order, or the nobility of the second class, called 'hidalgos y infanciones,' together with the magistrates of cities, might, either in the cortes, or in a voluntary assembly, join in union, and binding themselves by mutual oaths and the exchange of hostages to be faithful to each other, they might require the king, in

the name and by the authority of this body corporate, to grant them redress. If the king refused to comply with their request, or took arms in order to oppose them, they might, in virtue of the privilege of union, instantly withdraw their allegiance from the king, refuse to acknowledge him as their sovereign, and proceed to elect another monarch; nor did they incur any guilt, or become liable to any prosecution on that account. Blanca, Com. Rer. Arag. 661. 669. This union did not resemble the confederacies in other feudal kingdoms. It was a constitutional association, in which legal privileges were vested; which issued its mandates under a common seal, and proceeded in all its operations by regular and ascertained forms. This dangerous right was not only claimed, but exercised. In the year 1287, the Aragonese formed an union in opposition to Alfonso the third, and obliged that king not only to comply with their demands, but to ratify a privilege so fatal to the power of the crown. Zurita, Anales, tom. i. p. 322. In the year 1347, an union was formed against Peter the fourth with equal success, and a new ratification of the privilege was extorted. Zurita, tom. ii. p. 202. But soon after, the king having defeated the leaders of the union in battle, the privilege of union was finally abrogated in the cortes, and all the laws or records, which contained any confirmation of it, were cancelled or destroyed. The king, in presence of the cortes, called for the act whereby he had ratified the union, and having wounded his hand with his poniard, he held it above the record, "that privilege," says he, "which has been so fatal to the kingdom, and so injurious to royalty, should be effaced with the blood of a king." Zurita, tom. ii. p. 229. The law abolishing the union is published, Fueros y Observanc. lib. ix. p. 178. From that period, the justiza became the constitutional guardian of public liberty, and his power and jurisdiction occasioned none of those violent convulsions which the tumultuary privi-

lege of the union was apt to produce. The constitution of Aragon, however, still remained extremely free. One source of this liberty arose from the early admission of the representatives of cities into the cortes. It seems probable from Zurita, that burgesses were constituent members of the cortes from its first institution. He mentions a meeting of cortes, a. d. 1133, in which the "procuradores de las ciudades y villas" were present. Tom. i. p. 51. This is the constitutional language in which their presence is declared in the cortes, after the journals of that court were regularly kept. It is probable, that an historian so accurate as Zurita would not have used these words, if he had not taken them from some authentic record. It was more than a century after this period before the representatives of cities formed a constituent part in the supreme assemblies of the other European nations. The free spirit of the Aragonese government is conspicuous in many particulars. The cortes not only opposed the attempts of their kings to increase their revenue, or to extend their prerogative, but they claimed rights and exercised powers which will appear extraordinary even in a country accustomed to the enjoyment of liberty. In the year 1286, the cortes claimed the privilege of naming the members of the king's council and the officers of his household; and they seem to have obtained it for some time. Zurita, tom. i. p. 303. 307. It was the privilege of the cortes to name the officers who commanded the troops raised by their authority. This seems to be evident from a passage in Zurita. When the cortes, in the year 1503, raised a body of troops to be employed in Italy, it passed an act, empowering the king to name the officers who should command them, Zurita, tom. v. p. 274; which plainly implies that, without this warrant, it did not belong to him in virtue of his prerogative. In the Fueros y Observancias del Reyno de Aragon, two general declarations of the rights and privileges of the Aragonese are published: the one in the

reign of Pedro the first, a. d. 1283, the other in that of James the second, a. d. 1325. They are of such a length, that I cannot insert them; but it is evident from these, that not only the privileges of the nobility, but the rights of the people, personal as well as political, were, at that period, more extensive and better understood than in any kingdom in Europe. Lib. i. p. 7. 9. The oath by which the king bound himself to observe those rights and liberties of the people, was very solemn. Ibid. p. 14, b. and p. 15. The cortes of Aragon discovered, not only the jealousy and vigilance which are peculiar to free states, in guarding the essential parts of the constitution, but they were scrupulously attentive to observe the most minute forms and ceremonies to which they were accustomed. According to the established laws and customs of Aragon, no foreigner had liberty to enter the hall in which the cortes assembled. Ferdinand, in the year 1481, appointed his queen, Isabella, regent of the kingdom, while he was absent during the course of the campaign. The law required that a regent should take the oath of fidelity in presence of the cortes; but, as Isabella was a foreigner, before she could be admitted, the cortes thought it necessary to pass an act authorizing the serjeant porter to open the door of the hall, and to allow her to enter; "so attentive were they," says Zurita, "to observe their laws and forms, even such as may seem most minute." Tom. iv. p. 313.

The Aragonese were no less solicitous to secure the personal rights of individuals, than to maintain the freedom of the constitution; and the spirit of their statutes with respect to both was equally liberal. Two facts relative to this matter merit observation. By an express statute in the year 1335, it was declared to be unlawful to put any native Aragonese to the torture. If he could not be convicted by the testimony of witnesses, he was instantly absolved. Zurita, tom. ii. p. 66. Zurita records the regulation with the satisfac-

tion natural to an historian, when he contemplates the humanity of his countrymen. He compares the laws of Aragon to those of Rome, as both exempted citizens and freemen from such ignominious and cruel treatment, and had recourse to it only in the trial of slaves. Zurita had reason to bestow such an encomium on the laws of his country. Torture was, at that time, permitted by the laws of every other nation in Europe. Even in England, from which the mild spirit of legislation has long banished it, torture was not at that time unknown. Observations on the Statutes, chiefly the more ancient, etc. p. 66.

The other fact shows, that the same spirit which influenced the legislature prevailed among the people. In the year 1485, the religious zeal of Ferdinand and Isabella prompted them to introduce the inquisition into Aragon. Though the Aragonese were no less superstitiously attached than the other Spaniards to the Roman catholic faith, and no less desirous to root out the seeds of errour and of heresy which the jews and Moors had scattered, yet they took arms against the inquisitors, murdered the chief inquisitor, and long opposed the establishment of that tribunal. The reason which they gave for their conduct was: That the mode of trial in the inquisition was inconsistent with liberty. The criminal was not confronted with the witnesses he was not acquainted with what they deposed against him, he was subjected to torture, and the goods of persons condemned were confiscated. Zurita, Anales, tom. iv. p. 341.

The form of government in the kingdom of Valencia, and principality of Catalonia, which were annexed to the crown of Aragon, was likewise extremely favourable to liberty. The Valencians enjoyed the privilege of 'union,' in the same manner with the Aragonese. But they had no magistrate resembling the justiza. The Catalonians were no less jealous of their liberties than the two other nations, and no less bold in asserting

them. But it is not necessary for illustrating the following history, to enter into any farther detail concerning the peculiarities in the constitution of these kingdoms.

Note XXXIII. Sect. III. p. 139, u.

I have searched in vain among the historians of Castile for such information as might enable me to trace the progress of laws and government in Castile, or to explain the nature of the constitution with the same degree of accuracy wherewith I have described the political state of Aragon. It is manifest not only from the historians of Castile, but from its ancient laws, particularly the fuero juzgo, that its monarchs were originally elective. Ley, 2. 5. 8. They were chosen by the bishops, the nobility, and the people, ibid. It appears from the same venerable code of laws, that the prerogative of the Castilian monarchs was extremely limited. Villaldiego, in his commentary on the fuero juzgo, produces many facts and authorities in confirmation of both these particulars. Dr. Geddes, who was well acquainted with Spanish literature, complains that he could find no author who gave a distinct account of the cortes, or supreme assembly of the nation, or who described the manner in which it was held, or mentioned the precise number of members who had a right to sit in it. He produces, however, from Gil Gonzales d'Avila, who published a history of Henry the second, the writ of summons to the town of Abula, requiring it to choose representatives to appear in the cortes which he called to meet a. d. 1390. From this we learn, that prelates, dukes, marquisses, the masters of the three military orders, condes, and ricos hombres, were required to attend. These composed the bodies of ecclesiastics and nobles, which formed two members of the legislature. The cities which sent members to that meeting of the cortes were forty-eight. The number of representatives, for the cities had right to choose more or fewer according to their respective

dignity, amounted to an hundred and twenty-five. Geddes, Miscellaneous Tracts, vol. i. 331. Zurita having occasion to mention the cortes which Ferdinand held at Toro a. d. 1505, in order to secure for himself the government of Castile after the death of Isabella, records, with his usual accuracy, the names of the members present, and of the cities which they represented. From that list it appears that only eighteen cities had deputies in this assembly. Anales de Aragon, tom. vi. p. 3. What was the occasion of this great difference in the number of cities represented in these two meetings of the cortes, I am unable to explain.

NOTE XXXIV. SECT. III. p. 141, y.

A great part of the territory in Spain was engrossed by the nobility. L. Marinæus Siculus, who composed his treatise, De Rebus Hispaniæ, during the reign of Charles the fifth, gives a catalogue of the Spanish nobility, together with a yearly rent of their estates. According to his account, which he affirms was as accurate as the nature of the subject would admit, the sum total of the annual revenue of their lands amounted to one million four hundred and eighty-two thousand ducats. If we make allowance for the great difference in the value of money in the fifteenth century from that which it now bears, and consider that the catalogue of Marinæus includes only the 'titulados,' or nobility whose families were distinguished by some honorary title, their wealth must appear very great. L. Marinæus, ap. Schott. Scriptores Hispan. vol. i. p. 323. The commons of Castile, in their contests with the crown, which I shall hereafter relate, complain of the extensive property of the nobility as extremely pernicious to the kingdom. In one of their manifestoes they assert, that from Valladolid to St. Jago in Galicia, which was an hundred leagues, the crown did not possess more than three villages. All the rest belonged to the nobility, and could be sub-

jected to no public burthen. Sandov. Vida del Emperador Carl. V. vol. i. p. 422. It appears from the testimony of authors quoted by Bovadilla, that these extensive possessions were bestowed upon the 'ricos hombres, hidalgos, and cavalleros,' by the kings of Castile, in reward for the assistance, which they had received from them in expelling the Moors. They likewise obtained, by the same means, a considerable influence in the cities, many of which anciently depended upon the nobility. Politica para Corregidores. Amb. 1750. fol. vol. i. 440. 442.

NOTE XXXV. SECT. III. p. 142, z.

I have been able to discover nothing certain, as I observed, Note xviii. with respect to the origin of communities or free cities in Spain. It is probable, that, as soon as the considerable towns were recovered from the Moors, the inhabitants who fixed their residence in them, being persons of distinction and credit, had all the privilege of municipal government and jurisdiction conferred upon them. Many striking proofs occur of the splendour, wealth, and power of the Spanish cities. Hieronymus Paulus wrote a description of Barcelona, in the year 1491, and compares the dimensions of the town to that of Naples, and the elegance of its buildings, the variety of its manufactures, and the extent of its commerce, to Florence. Hieron. Paulus, ap. Schott. Scrip. Hisp. ii. 844. Marinæus describes Toledo as a large and populous city. A great number of its inhabitants were persons of quality and of illustrious rank. Its commerce was great. It carried on with great activity and success the manufactures of silk and wool; and the number of inhabitants employed in these two branches of trade amounted nearly to ten thousand. Marin. ubi supr. p. 308. I know no city, says he, that I would prefer to Valladolid for elegance and splendour. Ibid. p. 312. We may form some estimate of its populousness from the following circumstances. The

citizens having taken arms in the year 1516, in order to oppose a measure concerted by cardinal Ximenes, they mustered in the city, and in the territory which belonged to it, thirty thousand fighting men. Sandov. Vida del Emper. Carl. V. tom. i. p. 81. The manufactures carried on in the towns of Spain were not intended merely for home consumption, they were exported to foreign countries, and their commerce was a considerable source of wealth to the inhabitants. The maritime laws of Barcelona are the foundation of mercantile jurisprudence in modern times, as the Leges Rhodiæ were among the ancients. All the commercial states in Italy adopted these laws, and regulated their trade according to them. Sandi, Storia Civile Veneziana, vol. ii. 865. It appears from several ordinances of the kings of France, that the merchants of Aragon and Castile were received on the same footing, and admitted to the same privileges with those of Italy. Ordonnances des Roys, etc. tom. ii. p. 135. iii. 166. 504. 635. Cities in such a flourishing state became a respectable part of the society, and were entitled to a considerable share in the legislature. The magistrates of Barcelona aspired to the highest honour a Spanish subject can enjoy, that of being covered in the presence of their sovereign, and of being treated as grandees of the kingdom. Origin de la Dignidad de Grande de Castilla por Don Alonso Carillo. Madr. 1657. p. 18.

Note XXXVI. Sect. III. p. 144, b.

The military order of St. Jago, the most honourable and opulent of the three Spanish orders, was instituted about the year 1170. The bull of confirmation, by Alexander the third, is dated a. d. 1176. At that time a considerable part of Spain still remained under subjection to the Moors, and the whole country was much exposed to depredations, not only of the enemy, but of banditti. It is no wonder, then, that an institu-

tion, the object of which was to oppose the enemies of the christian faith, and to restrain and punish those who disturbed the public peace, should be extremely popular, and meet with general encouragement. The wealth and power of the order became so great, that, according to one historian, the grand master of St. Jago was the person in Spain of greatest power and dignity next to the king. Æl. Anton. Nebrissensis, ap. Schott. Scrip. Hisp. i. 812. Another historian observes, that the order possessed every thing in Castile that a king would most desire to obtain. Zurita, Anales, v. 22. The knights took the vows of obedience, of poverty, and of conjugal chastity. By the former they were bound implicitly to obey the commands of their grand master. The order could bring into the field a thousand men at arms. Æl. Ant. Nebriss. p. 813. If, as we have reason to believe, these men at arms were accompanied as was usual in that age, this was a formidable body of cavalry. There belonged to this order eighty-four commanderies, and two hundred priories and other benefices. Dissertations sur la Chevalerie par Hon. de Ste. Marie, p. 262. It is obvious how formidable to his sovereign the command of these troops, the administration of such revenues, and the disposal of so many offices, must have rendered a subject. The other two orders, though inferior to that of St. Jago in power and wealth, were nevertheless very considerable fraternities. When the conquest of Granada deprived the knights of St. Jago of those enemies against whom their zeal was originally directed, superstition found out a new object, in defence of which they engaged to employ their courage. To their usual oath they added the following clause: "We do swear to believe, to maintain, and to contend in public and in private, that the virgin Mary, the mother of God, our lady, was conceived without the stain of original sin." This addition was made about the middle of the seventeenth century. Honoré de

Ste. Marie Dissertations, etc. p. 263. Nor is such a singular engagement peculiar to the order of St. Jago. The members of the second military order in Spain, that of Calatrava, equally zealous to employ their prowess in defence of the honours of the blessed virgin, have likewise professed themselves her true knights. Their vow, conceived in terms more theologically accurate than that of St. Jago, may afford some amusement to an English reader. "I vow to God, to the grand master, and to you who here represent his person, that now; and for ever, I will maintain and contend, that the virgin Mary, mother of God, our lady, was conceived without original sin, and never incurred the pollution of it; but that in the moment of her happy conception, and of the union of her soul with her body, the divine grace prevented and preserved her from original guilt, by the merits of the passion and death of Christ our redeemer, her future son, foreseen in the divine council, by which she was truly redeemed, and by a more noble kind of redemption than any of the children of Adam. In the belief of this truth, and in maintaining the honour of the most holy virgin, through the strength of Almighty God, I will live and will die." Definiciones de la Orden. de Calatrava, conforme al Capitulo General en 1652, fol. Madr. 1748. p. 153. Though the church of Rome hath prudently avoided to give its sanction to the doctrine of the immaculate conception, and the two great monastic orders of St. Dominick and St. Francis have espoused opposite opinions concerning it, the Spaniards are such ardent champions for the honour of the virgin, that when the present king of Spain instituted a new military order, in the year 1771, in commemoration of the birth of his grandson, he put it under the immediate protection of the most holy Mary in the mystery of her immaculate conception. Constituciones de la real y distinguida Orden. Española de Carlos III. p. 7. To undertake the defence of the virgin Mary's honour, had such a

resemblance to that species of refined gallantry, which was the original object of chivalry, that the zeal with which the military orders bound themselves, by a solemn vow, to defend it, was worthy of a true knight, in those ages, when the spirit of the institution subsisted in full vigour. But, in the present age, it must excite some surprise, to see the institution of an illustrious order connected with a doctrine so extravagant, and destitute of any foundation in scripture.

Note XXXVII. Sect. III. p. 147, e.

I have frequently had occasion to take notice of the defects in police during the middle ages, occasioned by the feebleness of government, and the want of proper subordination among the different ranks of men. I have observed in a former note, that this greatly interrupted the intercourse between nations, and even between different places in the same kingdom. The descriptions which the Spanish historians give of the frequency of rapine, murder, and every act of violence, in all the provinces of Spain, are amazing, and present to us the idea of a society but little removed from the disorder and turbulence of that which has been called a state of nature. Zurita, Anales de Arag. i. 175. Æl. Ant. Nebrissensis Rer. a Ferdin. Gestar. Hist. ap. Schottum, ii. 849. Though the excess of these disorders rendered the institution of the 'santa hermandad' necessary, great care was taken at first to avoid giving any offence or alarm to the nobility. The jurisdiction of the judges of the hermandad was expressly confined to crimes which violated the public peace. All other offences were left to the cognizance of the ordinary judges. If a person was guilty of the most notorious perjury, in any trial before a judge of the hermandad, he could not punish him, but was obliged to remit the case to the ordinary judge of the place. Commentaria in Regias Hispan. Constitut. per Alph. de Azevedo, pars v. p. 223, etc. fol. Duaci, 1612.

Notwithstanding these restrictions, the barons were early sensible how much the establishment of the hermandad would encroach on their jurisdiction. In Castile, some opposition was made to the institution; but Ferdinand had the address to obtain the consent of the constable to the introduction of the hermandad into that part of the kingdom where his estate lay; and by that means, as well as the popularity of the institution, he surmounted every obstacle that stood in its way. El. Ant. Nebrissen. 851. In Aragon, the nobles combined against it with great spirit; and Ferdinand, though he supported it with vigour, was obliged to make some concessions in order to reconcile them. Zurita, Anales de Arag. iv. 356. The power and revenue of the hermandad in Castile seem to have been very great. Ferdinand, when preparing for the war against the Moors of Granada, required of the hermandad to furnish him sixteen thousand beasts of burthen, together with eight thousand men to conduct them, and he obtained what he demanded. Æl. Ant. Nebriss. 881. The hermandad has been found to be of so much use in preserving peace, and restraining or detecting crimes, that it is still continued in Spain; but as it is no longer necessary either for moderating the power of the nobility, or extending that of the crown, the vigour and authority of the institution diminish gradually.

NOTE XXXVIII. SECT. III. p. 149, f.

Nothing is more common among antiquaries, and there is not a more copious source of errour, than to decide concerning the institutions and manners of past ages, by the forms and ideas which prevail in their own times. The French lawyers, in the seventeenth and eighteenth centuries having found their sovereigns in possession of absolute power, seem to think it a duty incumbent on them to maintain that such undoubted authority belonged to the crown in every period of

their monarchy. "The government of France," says M. de Réal very gravely, "is purely monarchical at this day, as it was from the beginning. Our kings were absolute originally as they are at present." Science du Gouvernement, tom. ii. p. 31. It is impossible, however, to conceive two states of civil society more unlike to each other, than that of the French nation under Clovis and that under Louis the fifteenth. It is evident from the codes of laws of the various tribes which settled in Gaul, and the countries adjacent to it, as well as from the history of Gregory of Tours, and other early annalists, that among all these people the form of government was extremely rude and simple, and that they had scarcely begun to acquire the first rudiments of that order and police which are necessary in extensive societies. The king or leader had the command of soldiers or companions, who followed his standard from choice, not by constraint. I have produced the clearest evidence of this, Note vi. An event related by Gregory of Tours, lib. iv. c. 14. affords the most striking proof of the dependence of the early French kings on the sentiments and inclination of their people. Clotaire the first having marched at the head of his army, in the year 553, against the Saxons, that people, intimidated at his approach, sued for peace, and offered to pay a large sum to the offended monarch. Clotaire was willing to close with what they proposed. But his army insisted to be led forth to battle. The king employed all his eloquence to persuade them to accept of what the Saxons were ready to pay. The Saxons, in order to sooth them, increased their original offer. The king renewed his solicitations; but the army, enraged, rushed upon the king, tore his tent in pieces, dragged him out of it, and would have slain him on the spot, if he had not consented to lead them instantly against the enemy.

If the early monarchs of France possessed such limited authority, even while at the head of their army,

their prerogative during peace will be found to be still more confined. They ascended the throne not by any hereditary right, but in consequence of the election of their subjects. In order to avoid an unnecessary number of quotations, I refer my readers to Hottomanni Franco-Gallia, cap. vi. p. 47. edit. 1573, where they will find the fullest proof of this from Gregory of Tours, Amoinus, and the most authentic historians of the Merovingian kings. The effect of this election was not to invest them with absolute power. Whatever related to the general welfare of the nation, was submitted to public deliberation, and determined by the suffrage of the people, in the annual assemblies called 'les champs de mars' and 'les champs de mai.' These assemblies were called 'champs,' because, according to the custom of all the barbarous nations, they were held in the open air, in some plain capable of containing the vast number of persons who had a right to be present. Jo. Jac. Sorberus de Comitiis veterum Germanorum, vol. i. sect. 19, etc. They were denominated champs de mars and de mai, from the months in which they were held. Every freeman seems to have had a right to be present in these assemblies. Sorberus, ibid. sect. 133, etc. The ancient annals of the Franks describe the persons who were present in the assembly held a. d. 788, in these words: "In placito Ingelheimensi conveniunt pontifices, majores, minores, sacerdotes, reguli, duces, comites, præfecti, cives, oppidani." Apud Sorber. sect. 304. There every thing that concerned the happiness of their country, says an ancient historian, every thing that could be of benefit to the Franks, was considered and enjoined. Fredegarius ap. Du Cange Glossar. voc. Campus Martii. Chlotharius the second describes the business, and acknowledges the authority of these assemblies. "They are called," says he, "that whatever relates to the common safety may be considered and resolved by common deliberation; and whatever they determine, to that I

will conform." Amoinus de Gest. Franc. lib. iv. c. i. ap. Bouquet, Recueil, iii. 116. The statutory clauses or words of legislative authority in the decrees issued in these assemblies, run not in the name of the king alone. "We have treated," says Childebert, in a decree, a. d. 532, in the assembly of March, "together with our nobles, concerning some affairs, and we now publish the conclusion, that it may come to the knowledge of all." Childeb. Decret. ap. Bouquet, Recueil des Histor. tom. iv. p. 3. "We have agreed, together with our vassals." Ibid. sect. 2. "It is agreed in the assembly in which we were all united." Ibid. sect. 4. The Salic laws, the most venerable monument of French jurisprudence, were enacted in the same manner. "Dictaverunt Salicam legem proceres ipsius gentis, qui tunc temporis apud eam erant rectores. Sunt autem electi de pluribus viri quatuor—qui per tres Mallos convenientes, omnes causarum origines solicite discurrendo, tractantes de singulis, judicium decreverunt hoc modo." Præf. Leg. Salic. ap. Bouquet. Ibid. p. 122. "Hoc decretum est apud regem et principes ejus, et apud cunctum populum christianum, qui infra regnum Merwingorum consistunt." Ibid. p. 124. Nay, even in their charters, the kings of the first race are careful to specify that they were granted with the consent of their vassals. "Ego Childebertus, rex una cum consensu et voluntate Francorum," etc. a. d. 558. Bouquet, ibid. 622. "Chlotharius III. una cum patribus nostris, episcopis, optimatibus, cæterisque palatii nostri ministris," a. d. 664. Ibid. 648. "De consensu fidelium nostrorum." Mably, Observ. tom. i. p. 239. The historians likewise describe the functions of the king in the national assemblies in such terms, as imply that his authority there was extremely small, and that every thing depended on the court itself. "Ipse rex," says the author of Annales Francorum, speaking of the Field of March, "sedebat in sella regia, circumstante

exercitu, præcipiebatque is, die illo, quicquid a Francis decretum erat." Bouquet, Recueil, tom. ii. p. 647.

That the general assemblies exercised supreme jurisdiction over all persons, and with respect to all causes, is so evident as to stand in need of no proof. The trial of Brunehaut, a. d. 613, how unjust soever the sentence against her may be, as related by Fredegarius, Chron. cap. 42. Bouquet, ibid. 430, is in itself sufficient proof of this. The notorious violence and iniquity of the sentence serve to demonstrate the extent of jurisdiction which this assembly possessed, as a prince so sanguinary as Clothaire the second thought the sanction of its authority would be sufficient to justify his rigorous treatment of the mother and grandmother of so many kings.

With respect to conferring donatives on the prince, we may observe, that among nations whose manners and political institutions are simple, the public as well as individuals having few wants, they are little acquainted with taxes, and free uncivilized tribes disdain to submit to any stated imposition. This was remarkably the case of the Germans, and of all the various people that issued from that country. Tacitus pronounces two tribes not to be of German origin, because they submitted to pay taxes. De Morib. Germ. c. 43. And speaking of another tribe according to the ideas prevalent in Germany, he says, " they were not degraded by the imposition of taxes." Ibid. c. 29. Upon the settlement of the Franks in Gaul, we may conclude, that while elated with the consciousness of victory they would not renounce the high-spirited ideas of their ancestors, or voluntarily submit to a burthen which they regarded as a badge of servitude. The evidence of the earliest records and historians justifies this conclusion. M. de Montesquieu, in the twelfth and subsequent chapters of the thirteenth book of l'Esprit des Loix, and M. de Mably, Observat. sur

l'Hist. de France, tom. i. p. 247, have investigated this fact with great attention, and have proved clearly that the property of freemen among the Franks was not subject to any stated tax. That the state required nothing from persons of this rank, but military service at their own expense, and that they should entertain the king in their houses when he was upon any progress through his dominions, or his officers when sent on any public employment, furnishing them with carriages and horses. Monarchs subsisted almost entirely upon the revenues of their own domains, and upon the perquisites arising from the administration of justice, together with a few small fines and forfeitures exacted from such as had been guilty of certain trespasses. It is foreign from my subject to enumerate these. The reader may find them in Observat. de M. de Mably, vol. i. p. 267.

When any extraordinary aid was granted by freemen to their sovereign, it was purely voluntary. In the annual assembly of March or May, it was the custom to make the king a present of money, of horses or arms, or of some other thing of value. This was an ancient custom, and derived from their ancestors the Germans. "Mos est civitatibus, ultro ac viritim conferre principibus, vel armentorum, vel frugum, quod pro honore acceptum, etiam necessitatibus subvenit." Tacit. de Mor. Germ. c. 15. These gifts, if we may form a judgment concerning them from the general terms in which they are mentioned by the ancient historians, were considerable, and made no small part of the royal revenue. Many passages to this purpose are produced by M. du Cange, Dissert. iv. sur Joinville, 153. Sometimes a conquered people specified the gift which they bound themselves to pay annually, and it was exacted as a debt if they failed. Annales Metenses, ap. Du Cange, ibid. p. 155. It is probable that the first step towards taxation was to ascertain the value of these gifts, which were originally gratuitous, and to compel the people to pay the sum at which they were

rated. Still, however, some memory of their original was preserved, and the aids granted to monarchs in all the kingdoms of Europe were termed ' benevolences, or free gifts.'

The kings of the second race in France were raised to the throne by the election of the people. " Pepinus rex pius," says an author who wrote a few years after the transaction which he records, " per authoritatem papæ, et unctionem sancti chrismatis et electionem omnium Francorum in regni solio sublimatus est." Clausula de Pepini consecratione ap. Bouq. Recueil des Histor. tom. v. p. 9. At the same time, as the chief men of the nation had transferred the crown from one family to another, an oath was exacted of them, that they should maintain on the throne the family which they had now promoted; " ut nunquam de alterius lumbis regem in ævo præsumant eligere." Ibid. p. 10. This oath the nation faithfully observed during a considerable space of time. The posterity of Pepin kept possession of the throne; but with respect to the manner of dividing their dominions among their children, princes were obliged to consult the general assembly of the nation. Thus Pepin himself, a. d. 768, appointed his two sons, Charles and Carlomannus, to reign as joint sovereigns; but he did this, " una cum consensu Francorum et procerum suorum seu et episcoporum," before whom he laid the matter in their general assembly. Conventus apud Sanctum Dionysium, Capitular. vol. i. p. 187. This destination the French confirmed in a subsequent assembly, which was called upon the death of Pepin; for, as Eginhart relates, they not only appointed them kings, but by their authority they regulated the limits of their respective territories. Vita Car. Magni ap. Bouquet, Recueil, tom. v. p. 90. In the same manner, it was by the authority of the supreme assemblies that any dispute which arose among the descendants of the royal family was determined. Charlemagne recognises this important part of their juris-

diction, and confirms it in his charter concerning the partition of his dominions; for he appoints, that, in case of any uncertainty with respect to the right of the several competitors, he whom the people shall choose shall succeed to the crown. Capitular. vol. i. 442.

Under the second race of kings, the assemblies of the nation, distinguished by the name of 'conventus,' 'malli,' 'placita,' were regularly assembled once a year, at least, and frequently twice in the year. One of the most valuable monuments of the history of France is the treatise of Hincmarus, archbishop of Rheims, de Ordine Palatii. He died a. d. 882, only sixty-eight years after Charlemagne; and he relates in that short discourse the facts which were communicated to him by Adalhardus, a minister and confidant of Charlemagne. From him we learn, that this great monarch never failed to hold the general assembly of his subjects every year. "In quo placito generalitas universorum majorum tam clericorum quam laicorum conveniebat." Hincm. Oper. edit. Sirmondi, vol. ii. c. 29. 211. In these assemblies, matters which related to the general safety and state of the kingdom were always discussed, before they entered upon any private or less important business. Ibid. c. 33. p. 213. His immediate successors imitated his example, and transacted no affair of importance without the advice of their great council.

Under the second race of kings, the genius of the French government continued to be in a good measure democratical. The nobles, the dignified ecclesiastics, and the great officers of the crown, were not the only members of the national council; the people, or the whole body of freemen, either in person or by their representatives, had a right to be present in it. Hincmarus, in describing the manner of holding the general assemblies, says, that if the weather was favourable, they met in the open air; but if otherwise, they had

different apartments allotted to them, so that the dignified clergy were separated from the laity, and the "comites vel hujusmodi principes sibimet honorificabiliter a cætera multitudine segregarentur." Ibid. c. 35. p. 114. Agobardus, archbishop of Lyons, thus describes a national council in the year 833, wherein he was present. "Qui ubique conventus extitit ex reverendissimis episcopis, et magnificentissimis viris illustribus, collegio quoque abbatum et comitum, promiscuæque ætatis et dignitatis populo." The 'cætera multitudo' of Hincmarus is the same with the 'populus' of Agobardus, and both describe the inferior order of freemen, the same who were afterwards known in France by the name of the third estate, and in England by the name of commons. The people, as well as the members of higher dignity, were admitted to a share of the legislative power. Thus, by a law a. d. 803, it is ordained, "that the question shall be put to the people with respect to every new law, and if they shall agree to it, they shall confirm it by their signature." Capit. vol. i. 394. There are two capitularia which convey to us a full idea of the part which the people took in the administration of government. When they felt the weight of any grievance, they had a right to petition the sovereign for redress. One of these petitions, in which they desire that ecclesiastics might be exempted from bearing arms, and from serving in person against the enemy, is still extant. It is addressed to Charlemagne, a. d. 803, and expressed in such terms as could have been used only by men conscious of liberty, and of the extensive privileges which they possessed. They conclude with requiring him to grant their demand, if he wished that they should any longer continue faithful subjects to him. That great monarch, instead of being offended or surprised at the boldness of their petition, received it in a most gracious manner, and signified his willingness to comply with it. But sensible that he himself did not possess legislative

authority, he promises to lay the matter before the next general assembly, that such things as were of common concern to all might be there considered and established by common consent. Capitul. tom. i. p. 405—409. As the people by their petitions brought matters to be proposed in the general assembly, we learn from another capitulare the form in which they were approved there, and enacted as laws. The propositions were read aloud, and then the people were required to declare whether they assented to them or not. They signified their assent by crying three times, "We are satisfied;" and then the capitulare was confirmed by the subscription of the monarch, the clergy, and the chief men of the laity. Capitul. tom. i. p. 627. a. d. 822. It seems probable from a capitulare of Carolus calvus, a. d. 851, that the sovereign could not refuse his assent to what was proposed and established by his subjects in the general assembly. Tit. ix. sect. 6. Capitul. vol. ii. p. 47. It is unnecessary to multiply quotations concerning the legislative power of the national assembly of France under the second race, or concerning its right to determine with regard to peace and war. The uniform style of the capitularia is an abundant confirmation of the former. The reader who desires any farther information with respect to the latter, may consult Les Origines ou l'Ancien Gouvernement de la France, etc. tom. iii. p. 87, etc. What has been said with respect to the admission of the people or their representatives into the supreme assembly merits attention, not only in tracing the progress of the French government, but on account of the light which it throws upon a similar question agitated in England, concerning the time when the commons became part of the legislative body in that kingdom.

NOTE XXXIX. SECT. III. p. 150, g.

That important change which the constitution of

France underwent, when the legislative power was transferred from the great council of the nation to the king, has been explained by the French antiquaries with less care than they bestow in illustrating other events in their history. For that reason, I have endeavoured with greater attention to trace the steps which led to this memorable revolution. I shall here add some particulars which tend to throw additional light upon it. The Leges Salicæ, the Leges Burgundionum, and other codes published by the several tribes which settled in Gaul, were general laws extending to every person, to every province and district where the authority of those tribes was acknowledged. But they seem to have become obsolete; and the reason of their falling into disuse is very obvious. Almost the whole property of the nation was allodial when these laws were framed. But when the feudal institutions became general, and gave rise to an infinite variety of questions peculiar to that species of tenure, the ancient codes were of no use in deciding with regard to these, because they could not contain regulations applicable to cases which did not exist at the time when they were compiled. This considerable change in the nature of property made it necessary to publish the new regulations contained in the 'Capitularia.' Many of these, as is evident from the perusal of them, were public laws extending to the whole French nation, in the general assembly of which they were enacted. The weakness of the greater part of the monarchs of the second race, and the disorder into which the nation was thrown by the depredations of the Normans, encouraged the barons to usurp an independent power formerly unknown in France. The nature and extent of that jurisdiction which they assumed, I have formerly considered. The political union of the kingdom was at an end, its ancient constitution was dissolved, and only a feudal relation subsisted between the king and his vassals.

The regal jurisdiction extended no farther than the domains of the crown. Under the last kings of the second race, these were reduced almost to nothing. Under the first kings of the third race, they comprehended little more than the patrimonial estate of Hugh Capet, which he annexed to the crown. Even with this accession, they continued to be of small extent. Velly, Hist. de France, tom. iii. p. 32. Many of the most considerable provinces in France did not at first acknowledge Hugh Capet as a lawful monarch. There are still extant several charters, granted during the first years of his reign, with this remarkable clause in the form of dating the charter; "Deo regnante, rege expectante, regnante domino nostro Jesu Christo, Francis autem contra jus regnum usurpante Ugone rege." Bouquet, Recueil, tom. x. p. 544. A monarch whose title was thus openly disputed, was not in a condition to assert the royal jurisdiction, or to limit that of the barons.

All these circumstances rendered it easy for the barons to usurp the rights of royalty within their own territories. The Capitularia became no less obsolete than the ancient laws; local customs were every where introduced, and became the sole rule by which all civil transactions were conducted, and all causes were tried. The wonderful ignorance which became general in France during the ninth and tenth centuries, contributed to the introduction of customary law. Few persons, except ecclesiastics, could read; and as it was not in the power of such illiterate persons to have recourse to written laws, either as their guide in business, or their rule in administering justice, the customary law, the knowledge of which was preserved by tradition, universally prevailed.

During this period, the general assembly of the nation seems not to have been called, nor to have once exerted its legislative authority. Local customs regulated and decided every thing. A striking proof of

this occurs in tracing the progress of the French jurisprudence. The last of the Capitularia collected by M. Baluze, was issued in the year 921 by Charles the simple. An hundred and thirty years elapsed from that period to the publication of the first ordinance of the kings of the third race, contained in the great collection of M. Laurière, and the first ordinance which appears to be an act of legislation extending to the whole kingdom, is that of Philip Augustus, a. d. 1190. Ordon. tom. i. p. 1. 18. During that long period of two hundred and sixty-nine years, all transactions were directed by local customs, and no addition was made to the statutory law of France. The ordinances, previous to the reign of Philip Augustus, contain regulations the authority of which did not extend beyond the king's domains.

Various instances occur of the caution with which the kings of France ventured at first to exercise legislative authority. M. l'Abbé de Mably produces an ordinance of Philip Augustus, a. d. 1206, concerning the jews, who, in that age, were in some measure the property of the lord in whose territories they resided. But it is rather a treaty of the king with the countess of Champagne and the comte de Dampierre, than an act of royal power; and the regulations in it seem to be established not so much by his authority, as by their consent. Observat. sur. l'Hist. de France, ii. p. 355. In the same manner an ordinance of Louis the eighth concerning the jews, a. d. 1223, is a contract between the king and his nobles, with respect to their manner of treating that unhappy race of men. Ordon. tom. i. p. 47. The Establissemens of St. Louis, though well adapted to serve as general laws to the whole kingdom, were not published as such, but only as a complete code of customary law, to be of authority within the king's domains. The wisdom, the equity, and the order conspicuous in that code of St. Louis, procured it a favourable reception throughout the

kingdom. The veneration due to the virtues and good intentions of its author, contributed not a little to reconcile the nation to that legislative authority which the king began to assume. Soon after the reign of St. Louis, the idea of the king's possessing supreme legislative power became common. If, says Beaumanoir, the king makes any establishment specially for his own domain, the barons may nevertheless adhere to their ancient customs; but if the establishment be general, it shall be current throughout the whole kingdom, and we ought to believe that such establishments are made with mature deliberation, and for the general good. Coust. de Beauvoisis, c. 48. p. 265. Though the kings of the third race did not call the general assembly of the nation, during the long period from Hugh Capet to Philip the fair, yet they seem to have consulted the bishops and barons who happened to be present in their court, with respect to any new law which they published. Examples of this occur Ordon. tom. i. p. 3 et 5. This practice seems to have continued as late as the reign of St. Louis, when the legislative authority of the crown was well established. Ordon. tom. i. p. 58. a. d. 1246. This attention paid to the barons facilitated the kings' acquiring such full possession of the legislative power, as enabled them afterwards to exercise it without observing that formality.

The assemblies distinguished by the name of the states general, were first called a. d. 1302, and were held occasionally from that period to the year 1614, since which time they have not been summoned. These were very different from the ancient assemblies of the French nation under the kings of the first and second race. There is no point with respect to which the French antiquaries are more generally agreed, than in maintaining that the states general had no suffrage in the passing of laws, and possessed no proper legislative jurisdiction. The whole tenour of the

French history confirms this opinion. The form of proceeding in the states general was this. The king addressed himself, at opening the meeting, to the whole body assembled in one place, and laid before them the affairs on account of which he had summoned them. Then the deputies of each of the three orders, of nobles, of clergy, and of the third estate, met apart, and prepared their 'cahier' or memorial, containing their answer to the propositions which had been made to them, together with the representations which they thought proper to lay before the king. These answers and representations were considered by the king in his council, and generally gave rise to an ordinance. These ordinances were not addressed to the three estates in common. Sometimes the king addressed an ordinance to each of the estates in particular. Sometimes he mentioned the assembly of the three estates. Sometimes mention is made only of the assembly of that estate to which the ordinance is addressed. Sometimes no mention at all is made of the assembly of estates, which suggested the propriety of enacting the law. Préface au tome iii. des Ordon. p. xx. Thus the states general had only the privilege of advising and remonstrating; the legislative authority resided in the king alone.

Note XL. Sect. III. p. 154, i.

If the parliament of Paris be considered only as the supreme court of justice, every thing relative to its origin and jurisdiction is clear and obvious. It is the ancient court of the king's palace, new-modelled, rendered stationary, and invested with an extensive and ascertained jurisdiction. The power of this court, while employed in this part of its functions, is not the object of present consideration. The pretensions of the parliament to control the exercise of the legislative authority, and its claim of a right to interpose with respect to public affairs, and the political administra-

tion of the kingdom, lead to inquiries attended with great difficulty. As the officers and members of the parliament of Paris were anciently nominated by the king, were paid by him, and, on several occasions, were removed by him at pleasure, Chronic. Scandaleuse de Louis XI. ap. les Mém. de Comines, tom. ii. p. 51. édit. de M. Lenglet de Fresnoy, they cannot be considered as representatives of the people, nor could they claim any share in the legislative power as acting in their name. We must, therefore, search for some other source of this high privilege. 1. The parliament was originally composed of the most eminent persons in the kingdom. The peers of France, ecclesiastics of the highest order, and noblemen of illustrious birth, were members of it, to whom were added some clerks and counsellors learned in the laws. Pasquier, Recherches, p. 44, etc. Encyclopédie, tom. xii. art. Parlement, p. 3. 5. A court thus constituted was properly a committee of the states general of the kingdom, and was composed of those barons and 'fideles,' whom the kings of France were accustomed to consult with regard to every act of jurisdiction or legislative authority. It was natural, therefore, during the intervals between the meetings of the states general, or during those periods when that assembly was not called, to consult the parliament, to lay matters of public concern before it, and to obtain its approbation and concurrence, before any ordinance was published, to which the people were required to conform. 2. Under the second race of kings, every new law was reduced into proper form by the chancellor of the kingdom, was proposed by him to the people, and, when enacted, was committed to him to be kept among the public records, that he might give authentic copies of it to all who should demand them. Hincm. de Ord. Palat. c. 16. Capitul. Car. Calv. tit. xiv. sect. 11. tit. xxxiii. The chancellor presided in the parliament of Paris at its first institution. Encyclopédie, tom. iii. art. Chancelier, p. 88. It

was, therefore, natural for the king to continue to employ him in his ancient functions of framing, taking into his custody, and publishing the ordinances which were issued. To an ancient copy of the Capitularia of Charlemagne the following words are subjoined: "Anno tertio clementissimi domini nostri Caroli Augusti, sub ipso anno, hæc facta Capitula sunt, et consignata Stephano comiti, ut hæc manifesta faceret Parisiis mallo publico, et illa legere faceret coram scabineis, quod ita et fecit, et omnes in uno consenserunt, quod ipsi voluissent observare usque in posterum, etiam omnes scabinei, episcopi, abbates, comites, manu propria subter signaverunt." Bouquet, Recueil, tom. v. p. 663. 'Mallus' signifies not only the public assembly of the nation, but the court of justice held by the comes, or missus dominicus. 'Scabinei' were the judges, or the assessors of the judges in that court. Here then seems to be a very early instance, not only of laws being published in a court of justice, but of their being verified or confirmed by the subscription of the judges. If this was the common practice, it naturally introduced the verifying of edicts in the parliament of Paris. But this conjecture I propose with that diffidence, which I have felt in all my reasonings concerning the laws and institutions of foreign nations. 3. This supreme court of justice in France was dignified with the appellation of parliament, the name by which the general assembly of the nation was distinguished towards the close of the second race of kings; and men, both in reasoning and in conduct, were wonderfully influenced by the similarity of names. The preserving the ancient names of the magistrates established while the republican government subsisted in Rome, enabled Augustus and his successors to assume new powers with less observation and greater ease. The bestowing the same name in France upon two courts, which were extremely different, contributed not a little to confound their jurisdictions and functions.

All these circumstances concurred in leading the kings of France to avail themselves of the parliament of Paris, as the instrument of reconciling the people to the exercise of legislative authority by the crown. The French, accustomed to see all new laws examined and authorized, before they were published, did not sufficiently distinguish between the effect of performing this in the national assembly, or in a court appointed by the king. But as that court was composed of respectable members, and who were well skilled in the laws of their country, when any new edict received its sanction, that was sufficient to dispose the people to submit to it.

When the practice of 'verifying' and 'registering' the royal edicts in the parliament of Paris became common, the parliament contended that this was necessary in order to give them legal authority. It was established as a fundamental maxim in French jurisprudence, that no law could be published in any other manner; that without this formality no edict or ordinance could have any effect; that the people were not bound to obey it, and ought not to consider it as an edict or ordinance, until it was verified in the supreme court, after free deliberation. Roche-flavin des Parlemens de France, 4to. Gen. 1621. p. 921. The parliament, at different times, hath, with great fortitude and integrity, opposed the will of their sovereigns; and, notwithstanding their repeated and peremptory requisitions and commands, hath refused to verify and publish such edicts as it conceived to be oppressive to the people, or subversive of the constitution of the kingdom. Roche-flavin reckons, that between the year 1562 and the year 1589 the parliament refused to verify more than an hundred edicts of the kings. Ibid. 925. Many instances of the spirit and constancy with which the parliaments of France opposed pernicious laws, and asserted their own privileges, are enumerated

by Limnæus in his Notitiæ Regni Franciæ, lib. i. c. 9. p. 224.

But the power of the parliament to maintain and defend this privilege, bore no proportion to its importance, or to the courage with which the members asserted it. When any monarch was determined that an edict should be carried into execution, and found the parliament inflexibly resolved not to verify or publish it, he could easily supply this defect by the plenitude of his regal power. He repaired to the parliament in person, he took possession of his seat of justice, and commanded the edict to be read, verified, registered, and published in his presence. Then, according to another maxim of French law, the king himself being present, neither the parliament nor any magistrate whatever can exercise any authority, or perform any function. "Adveniente principe, cessat magistratus." Roche-flavin, ibid. p. 928, 929. Encyclopédie, tom. ix. art. Lit de justice, p. 581. Roche-flavin mentions several instances of kings who actually exerted this prerogative, so fatal to the residue of the rights and liberties transmitted to the French by their ancestors. Pasquier produces some instances of the same kind. Rech. p. 61. Limnæus enumerates many other instances. But the length to which this note has swelled, prevents me from inserting them at length, though they tend greatly to illustrate this important article in the French history, p. 245. Thus by an exertion of prerogative, which, though violent, seems to be constitutional, and is justified by innumerable precedents, all the efforts of the parliament to limit and control the king's legislative authority, are rendered ineffectual.

I have not attempted to explain the constitution or jurisdiction of any parliament in France but that of Paris. All of them are formed upon the model of that most ancient and respectable tribunal, and all my ob-

servations concerning it will apply with full force to them.

Note XLI. Sect. III. p. 158, o.

The humiliating posture in which a great emperor implored absolution is an event so singular, that the words in which Gregory himself describes it merit a place here, and convey a striking picture of the arrogance of that pontiff. "Per triduum, ante portam castri, deposito omni regio cultu, miserabiliter, utpote discalceatus, et laneis indutus, persistens, non prius cum multo fletu apostolicæ miserationis auxilium et consolationem implorari destitit, quam omnes qui ibi aderant, et ad quos rumor ille pervenit, ad tantam pietatem, et compassionis misericordiam movit, ut pro eo multis precibus et lacrymis intercedentes, omnes quidem insolitam nostræ mentis duritiem mirarentur; nonnulli vero in nobis non apostolicæ sedis gravitatem, sed quasi tyrannicæ feritatis crudelitatem esse clamârunt." Epist. Gregor. ap. Memorie della Contessa Matilda da Fran. Mar. Fiorentini. Lucca, 1756, vol. i. p. 174.

Note XLII. Sect. III. p. 166, s.

As I have endeavoured in the history to trace the various steps in the progress of the constitution of the empire, and to explain the peculiarities in its policy very fully, it is not necessary to add much by way of illustration. What appears to be of any importance, I shall range under distinct heads.

1. With respect to the power, jurisdiction, and revenue of the emperors. A very just idea of these may be formed by attending to the view which Pfeffel gives of the rights of the emperors at two different periods. The first at the close of the Saxon race, a. d. 1024. These, according to his enumeration, were the right of conferring all the great ecclesiastical benefices in Germany; of receiving the revenues of them during a

vacancy; of mortmain, or of succeeding to the effects of ecclesiastics who died intestate. The right of confirming or of annulling the elections of the popes. The right of assembling councils, and of appointing them to decide concerning the affairs of the church. The right of conferring the title of king upon their vassals. The right of granting vacant fiefs. The right of receiving the revenues of the empire, whether arising from the imperial domains, from imposts and tolls, from gold or silver mines, from the taxes paid by the jews, or from forfeitures. The right of governing Italy as its proper sovereigns. The right of erecting free cities, and of establishing fairs in them. The right of assembling the diets of the empire, and of fixing the time of their duration. The right of coining money, and of conferring that privilege on the states of the empire. The right of administering both high and low justice within the territories of the different states. Abrégé, p. 160. The other period is at the extinction of the emperors of the families of Luxemburg and Bavaria, a. d. 1437. According to the same author, the imperial prerogatives, at that time, were the right of conferring all dignities and titles, except the privilege of being a state of the empire. The right of 'preces primariæ,' or of appointing once during their reign a dignitary in each chapter or religious house. The right of granting dispensations with respect to the age of majority. The right of erecting cities, and of conferring the privilege of coining money. The right of calling the meetings of the diet, and of presiding in them. Abrégé, etc. p. 507. It were easy to show that Mr. Pfeffel is well founded in all these assertions, and to confirm them by the testimony of the most respectable authors. In the one period, the emperors appear as mighty sovereigns with extensive prerogatives; in the other, as the heads of a confederacy with very limited powers.

The revenues of the emperors decreased still more

than their authority. The early emperors, and particularly those of the Saxon line, besides their great patrimonial or hereditary territories, possessed an extensive domain both in Italy and Germany, which belonged to them as emperors. Italy belonged to the emperors as their proper kingdom, and the revenues which they drew from it were very considerable. The first alienations of the imperial revenue were made in that country. The Italian cities having acquired wealth, and aspiring at independence, purchased their liberty from different emperors, as I have observed, Note xv. The sums which they paid, and the emperors with whom they concluded these bargains, are mentioned by Casp. Klockius de Ærario, Norimb. 1671. p. 85, etc. Charles the fourth and his son Wenceslaus dissipated all that remained of the Italian branch of the domain. The German domain lay chiefly upon the banks of the Rhine, and was under the government of the counts palatine. It is not easy to mark out the boundaries, or to estimate the value of this ancient domain, which has been so long incorporated with the territories of different princes. Some hints with respect to it may be found in the glossary of Speidelius, which he has entitled Speculum Juridicio-Philologico-Politico-Historicum Observationum, etc. Norimb. 1673. vol. i. 679. 1045. A more full account of it is given by Klockius de Ærario, p. 84. Besides this, the emperors possessed considerable districts of land lying intermixed with the estates of the dukes and barons. They were accustomed to visit these frequently, and drew from their vassals, in each, what was sufficient to support their court during the time of their residence among them. Annalistæ, apud Struv. tom. i. 611. A great part of these detached possessions were seized by the nobles during the long interregnum, or during the wars occasioned by the contests between the emperors and the court of Rome. At the same time that such encroachments were made

on the fixed or territorial property of the emperors, they were robbed almost entirely of their casual revenues; the princes and barons appropriating to themselves taxes and duties of every kind, which had usually been paid to them. Pfeffel, Abrégé, p. 374. The profuse and inconsiderate ambition of Charles the fourth squandered whatever remained of the imperial revenues after so many defalcations. He, in the year 1376, in order to prevail with the electors to choose his son Wenceslaus, king of the Romans, promised each of them an hundred thousand crowns. But being unable to pay so large a sum, and eager to secure the election to his son, he alienated to the three ecclesiastical electors, and to the count palatine, such countries as still belonged to the imperial domain on the banks of the Rhine, and likewise made over to them all the taxes and tolls then levied by the emperors in that district. Trithemius and the author of the Chronicle of Magdeburgh, enumerate the territories and taxes which were thus alienated, and represent this as the last and fatal blow to the imperial authority. Struv. Corp. vol. i. p. 437. From that period the shreds of the ancient revenues possessed by the emperors have been so inconsiderable, that, in the opinion of Speidelius, all that they yield would be so far from defraying the expense of supporting their household, that they would not pay the charge of maintaining the posts established in the empire. Speidelii Speculum, etc. vol. i. p. 680. These funds, inconsiderable as they were, continued to decrease. Granvelle, the minister of Charles the fifth, asserted in the year 1546, in presence of several of the German princes, that his master drew no money at all from the empire. Sleid. History of the Reformation. Lond. 1689. p. 372. The same is the case at present. Traité du Droit Public de l'Empire, par M. le Coq de Villeray, p. 55. From the reign of Charles the fourth, whom Maximilian called the 'pest of the empire,' the emperors have depended

entirely on their hereditary dominions, as the chief and almost the only source of their power, and even of their subsistence.

2. The ancient mode of electing the emperors, and the various changes which it underwent, require some illustration. The imperial crown was originally attained by election, as well as those of most monarchies in Europe. An opinion long prevailed among the antiquaries and public lawyers of Germany, that the right of choosing the emperors was vested in the archbishops of Mentz, Cologne, and Treves, the king of Bohemia, the duke of Saxony, the marquis of Brandenburgh, and the count palatine of the Rhine, by an edict of Otho the third, confirmed by Gregory the fifth, about the year 996. But the whole tenour of history contradicts this opinion. It appears that, from the earliest period in the history of Germany, the person who was to reign over all was elected by the suffrage of all. Thus Conrad the first was elected by all the people of the Franks, say some annalists; by all the princes and chief men, say others; by all the nation, say others. See their words, Struv. Corp. 211. Conringius de German. Imper. Repub. Acroamata Sex. Ebroduni, 1654. p. 103. In the year 1024, posterior to the supposed regulations of Otho the third, Conrad the second was elected by all the chief men, and his election was approved and confirmed by the people. Struv. Corp. 284. At the election of Lotharius the second, a. d. 1125, sixty thousand persons of all ranks were present. He was named by the chief men, and their nomination was approved by the people. Struv. ibid. p. 357. The first author who mentions the seven electors is Martinus Polonus, who flourished in the reign of Frederick the second, which ended a. d. 1250. We find that, in all the ancient elections to which I have referred, the princes of the greatest power and authority were allowed by their countrymen to name the person whom they wished to appoint em-

peror, and the people approved or disapproved of their nomination. This privilege of voting first is called by the German lawyers the right of 'prætaxation.' Pfeffel. Abrégé, p. 316. This was the first origin of the exclusive right which the electors acquired. The electors possessed the most extensive territories of any princes in the empire; all the great offices of the state were in their hands by hereditary right; as soon as they obtained or engrossed so much influence in the election, as to be allowed the right of prætaxation, it was vain to oppose their will; and it even became unnecessary for the inferior ecclesiastics and barons to attend, when they had no other function but that of confirming the deed of these more powerful princes by their assent. During times of turbulence, the subordinate members of the Germanic body could not resort to the place of election without a retinue of armed vassals, the expense of which they were obliged to defray out of their own revenues; and finding their attendance to be unnecessary, they were unwilling to waste them to no purpose. The rights of the seven electors were supported by all the descendants and allies of their powerful families, who shared in the splendour and influence which they enjoyed by this distinguishing privilege. Pfeffel, Abrégé, p. 376. The seven electors were considered as the representatives of all the orders which composed the highest class of German nobility. There were three archbishops, chancellors of the three great districts into which the empire was anciently divided; one king, one duke, one marquis, and one count. All these circumstances contributed to render the introduction of this considerable innovation into the constitution of the Germanic body extremely easy. Every thing of importance, relating to this branch of the political state of the empire, is well illustrated by Onuphrius Panvinius, an augustinian monk of Verona, who lived in the reign of Charles the fifth. His treatise, if we make some allowance for that partiality which he

expresses in favour of the powers which the popes claimed in the empire, has the merit of being one of the first works in which a controverted point in history is examined with critical precision, and with a proper attention to that evidence which is derived from records, or the testimony of contemporary historians. It is inserted by Goldastus in his Politica Imperialia, p. 2.

As the electors have engrossed the sole right of choosing the emperors, they have assumed likewise that of deposing them. This high power the electors have not only presumed to claim, but have ventured, in more than one instance, to exercise. In the year 1298, a part of the electors deposed Adolphus of Nassau, and substituted Albert of Austria in his place. The reasons on which they found their sentence, show that this deed flowed from factious, not from public-spirited motives. Struv. Corp. vol. i. 540. In the first year of the fifteenth century, the electors deposed Wenceslaus, and placed the imperial crown on the head of Rupert, elector palatine. The act of deposition is still extant. Goldasti Constit. vol. i. 379. It is pronounced in the name and by the authority of the electors, and confirmed by several prelates and barons of the empire, who were present. These exertions of the electoral power demonstrate that the imperial authority was sunk very low.

The other privileges of the electors, and the rights of the electoral college, are explained by the writers on the public law in Germany.

3. With respect to the diets or general assemblies of the empire, it would be necessary, if my object were to write a particular history of Germany, to enter into a minute detail concerning the forms of assembling them, the persons who have right to be present, their division into several colleges or benches, the objects of their deliberation, the mode in which they carry on their debates or give their suffrages, and the authority of their decrees or recesses. But, as my only

object is to give the outlines of the constitution of the German empire, it will be sufficient to observe, that, originally, the diets of the empire were exactly the same with the assemblies of March and of May, held by the kings of France. They met, at least, once a year. Every freeman had a right to be present. They were assemblies, in which a monarch deliberated with his subjects concerning their common interest. Arumæus de Comitiis Rom. German. Imperii, 4to. Jenæ, 1660. cap. 7. N°. 20, etc. But when the princes, dignified ecclesiastics, and barons, acquired territorial and independent jurisdiction, the diet became an assembly of the separate states, which formed the confederacy of which the emperor was head. While the constitution of the empire remained in its primitive form, attendance on the diets was a duty, like the other services due from feudal subjects to their sovereign, which the members were bound to perform in person; and if any member who had a right to be present in the diet neglected to attend in person, he not only lost his vote, but was liable to a heavy penalty. Arumæus de Comit. c. 5. N°. 40. Whereas, from the time that the members of the diet became independent states, the right of suffrage was annexed to the territory or dignity, not to the person. The members, if they could not, or would not, attend in person, might send their deputies, as princes send ambassadors, and they were entitled to exercise all the rights belonging to their constituents. Ibid. N°. 42. 46. 49. By degrees, and upon the same principle of considering the diet as an assembly of independent states, in which each confederate had the right of suffrage, if any member possessed more than one of those states or characters which entitle to a seat in the diet, he was allowed a proportional number of suffrages. Pfeffel, Abrégé, 622. From the same cause the imperial cities, as soon as they became free, and acquired supreme and independent jurisdiction within their own territories, were

received as members of the diet. The powers of the diet extend to every thing relative to the common concern of the Germanic body, or that can interest or affect it as a confederacy. The diet takes no cognizance of the interior administration in the different states, unless that happens to disturb or threaten the general safety.

4. With respect to the imperial chamber, the jurisdiction of which has been the great source of order and tranquillity in Germany, it is necessary to observe, that this court was instituted, in order to put an end to the calamities occasioned by private wars in Germany. I have already traced the rise and progress of this practice, and pointed out its pernicious effects as fully as their extensive influence during the middle ages required. In Germany, private wars seem to have been more frequent, and productive of worse consequences, than in the other countries of Europe. There are obvious reasons for this. The nobility of Germany were extremely numerous, and the causes of their dissension multiplied in proportion. The territorial jurisdiction which the German nobles acquired, was more complete than that possessed by their order in other nations. They became, in reality, independent powers, and they claimed all the privileges of that character. The long interregnum from a. d. 1256 to a. d. 1273 accustomed them to an uncontrolled license, and led them to forget that subordination which is necessary in order to maintain public tranquillity. At the time when the other monarchs of Europe began to acquire such an increase of power and revenues as added new vigour to their government, the authority and revenues of the emperors continued gradually to decline. The diets of the empire, which alone had authority to judge between such mighty barons, and power to enforce its decisions, met very seldom. Conring. Acroamata, p. 234. The diets, when they did assemble, were often composed of several thousand

members, Chronic. Constat. ap. Struv. Corp. i. p. 546, and were tumultuary assemblies, ill qualified to decide concerning any question of right. The session of the diets continued only two or three days, Pfeffel, Abrégé, p. 244; so that they had no time to hear or discuss any cause that was in the smallest degree intricate. Thus Germany was left, in some measure, without any court of judicature capable of deciding the contests between its more powerful members, or of repressing the evils occasioned by their private wars.

All the expedients which were employed in other countries of Europe, in order to restrain this practice, and which I have described, Note xxi. were tried in Germany with little effect. The confederacies of the nobles and of the cities, and the division of Germany into various circles, which I mentioned in that note, were found likewise insufficient. As a last remedy, the Germans had recourse to arbiters whom they called 'austregæ.' The barons and states in different parts of Germany joined in conventions, by which they bound themselves to refer all controversies, that might arise between them, to the determination of 'austregæ,' and to submit to their sentences as final. These arbiters are named sometimes in the treaty of convention, an instance of which occurs in Ludewig, Reliquæ Manuscr. omnis Ævi, vol. ii. 212; sometimes they were chosen by mutual consent upon occasion of any contest that arose; sometimes they were appointed by neutral persons; and sometimes the choice was left to be decided by lot. Datt. de Pace publica Imperii, lib. i. cap. 27. N°. 60, etc. Speidelius Speculum, etc. voc. Austrag. p. 95. Upon the introduction of this practice, the public tribunals of justice became, in a great measure, useless, and were almost entirely deserted.

In order to reestablish the authority of government, Maximilian the first instituted the imperial chamber, at the period which I have mentioned. This tribunal

consisted originally of a president, who was always a nobleman of the first order, and of sixteen judges. The president was appointed by the emperor; and the judges, partly by him and partly by the states, according to forms which it is unnecessary to describe. A sum was imposed, with their own consent, on the states of the empire, for paying the salaries of the judges and officers in this court. The imperial chamber was established first at Francfort on the Maine. During the reign of Charles the fifth it was removed to Spires, and continued in that city above a century and a half. It is now fixed at Wetzlar. This court takes cognizance of all questions concerning civil right between the states of the empire, and passes judgment in the last resort, and without appeal. To it belongs likewise the privilege of judging in criminal causes, which may be considered as connected with the preservation of the public peace. Pfeffel, Abrégé, 560.

All causes relating to points of feudal right or jurisdiction, together with such as respect the territories which hold of the empire in Italy, belong properly to the jurisdiction of the aulic council. This tribunal was formed upon the model of the ancient court of the palace instituted by the emperors of Germany. It depended not upon the states of the empire, but upon the emperor; he having the right of appointing at pleasure all the judges of whom it is composed. Maximilian, in order to procure some compensation for the diminution of his authority, by the powers vested in the imperial chamber, prevailed on the diet, a. d. 1512, to give its consent to the establishment of the aulic council. Since that time, it has been a great object of policy in the court of Vienna to extend the jurisdiction, and support the authority of the aulic council, and to circumscribe and weaken those of the imperial chamber. The tedious forms and dilatory proceedings of the imperial chamber have furnished the emperors with pretexts for doing so. "Lites

Spiræ," according to the witticism of a German lawyer, " spirant, sed nunquam expirant." Such delays are unavoidable in a court composed of members, named by many different states jealous of each other. Whereas the judges of the aulic council, depending upon one master, and being responsible to him alone, are more vigorous and decisive. Puffendorf. de Statu Imper. German. cap. v. sect. 20. Pfeffel, Abrégé, p. 581.

NOTE XLIII. SECT. III. p. 169, u.

The description which I have given of the Turkish government is conformable to the accounts of the most intelligent travellers who have visited that empire. The count de Marsigli, in his treatise concerning the military state of the Turkish empire, ch. vi. and the author of Observations on the Religion, Laws, Government, and Manners of the Turks, published at London, 1768. vol. i. p. 81, differ from other writers, who have described the political constitution of that powerful monarchy. As they had opportunity, during their long residence in Turkey, to observe the order and justice, conspicuous in several departments of administration, they seem unwilling to admit that it should be denominated a despotism. But when the form of government in any country is represented to be despotic, this does not suppose that the power of the monarch is continually exerted in acts of violence, injustice, and cruelty. Under political constitutions, of every species, unless when some frantic tyrant happens to hold the sceptre, the ordinary administration of government must be conformable to the principles of justice, and if not active in promoting the welfare of the people, cannot certainly have their destruction for its object. A state, in which the sovereign possesses the absolute command of a vast military force, together with the disposal of an extensive revenue; in which the people have no privileges, and no part either im-

mediate or remote in legislation; in which there is no body of hereditary nobility, jealous of their own rights and distinctions, to stand as an intermediate order between the prince and the people, cannot be distinguished by any name but that of a despotism. The restraints, however, which I have mentioned, arising from the 'capiculy,' and from religion, are powerful. But they are not such as change the nature or denomination of the government. When a despotic prince employs an armed force to support his authority, he commits the supreme power to their hands. The pretorian bands in Rome dethroned, murdered, and exalted their princes, in the same wanton manner with the soldiery of the porte at Constantinople. But notwithstanding this, the Roman emperors have been considered by all political writers as possessing despotic power.

The author of Observations on the Religion, Laws, Government, and Manners of the Turks, in a preface to the second edition of his work, hath made some remarks on what is contained in this note, and in that part of the text to which it refers. It is with diffidence I set my opinion in opposition to that of a person who has observed the government of the Turks with attention, and has described it with abilities. But, after a careful review of the subject, to me the Turkish government still appears of such a species as can be ranged in no class but that to which political writers have given the name of 'despotism.' There is not in Turkey any constitutional restraint upon the will of the sovereign, or any barrier to circumscribe the exercise of his power, but the two which I have mentioned; one afforded by religion, the principle upon which the authority of the sultan is founded; the other by the army, the instrument which he must employ to maintain his power. The author represents the 'ulema,' or body of the law, as an intermediate order between the monarch and the people. Pref. p. 30.

But whatever restraint the authority of the ' ulema' may impose upon the sovereign, is derived from religion. The ' moulahs,' out of whom the mufti and other chief officers of the law must be chosen, are ecclesiastics. It is as interpreters of the koran, or divine will, that they are objects of veneration. The check, then, which they give to the exercise of arbitrary power is not different from one of those of which I took notice. Indeed, this restraint cannot be very considerable. The mufti, who is the head of the order, as well as every inferior officer of law, is named by the sultan, and is removable at his pleasure. The strange means employed by the ' ulema' in 1746, to obtain the dismission of a minister whom they hated, is a manifest proof that they possess but little constitutional authority which can serve as a restraint upon the will of the sovereign. Observat. p. 92 of 2d edit. If the author's idea be just, it is astonishing that the ' body of the law' should have no method of remonstrating against the errours of administration, but by setting fire to the capital.

The author seems to consider the ' capiculy' or soldiery of the porte, neither as formidable instruments of the sultan's power, nor as any restraint upon the exercise of it. His reasons for this opinion are, that the number of the capiculy is small in proportion to the other troops which compose the Turkish armies, and that, in time of peace, they are undisciplined. Pref. 2d edit. p. 23, etc. But the troops stationed in a capital, though their number be not great, are always masters of the sovereign's person and power. The pretorian bands bore no proportion to the legionary troops in the frontier provinces. The soldiery of the porte are more numerous, and must possess power of the same kind, and be equally formidable, sometimes to the sovereign, and oftener to the people. However much the discipline of the janizaries may be neglected at present, it certainly was not so in that age

to which alone my description of the Turkish government applies. The author observes, Pref. p. 29, that the janizaries never deposed any sultan of themselves, but that some form of law, true or false, has been observed, and that either the mufti, or some other minister of religion, has announced to the unhappy prince the law which renders him unworthy of the throne. Observ. p. 102. This will always happen. In every revolution, though brought about by military power, the deeds of the soldiery must be confirmed and carried into execution with the civil and religious formalities peculiar to the constitution.

This addition to the note may serve as a farther illustration of my own sentiments, but is not made with an intention of entering into any controversy with the author of Observations, etc. to whom I am indebted for the obliging terms in which he has expressed his remarks upon what I had advanced. Happy were it for such as venture to communicate their opinions to the world, if every animadversion upon them were conveyed with the same candid and liberal spirit. In one particular, however, he seems to have misapprehended what I meant. Pref. p. 17. I certainly did not mention his or count Marsigli's long residence in Turkey, as a circumstance which should detract from the weight of their authority. I took notice of it, in justice to my readers, that they might receive my opinion with distrust, as it differed from that of persons whose means of information was so far superior to mine.

Note XLIV. Sect. III. p. 170, z.

The institution, the discipline, and privileges of the janizaries are described by all the authors who give any account of the Turkish government. The manner in which enthusiasm was employed in order to inspire them with courage, is thus related by prince Cantemir: "When Amurath the first had formed them into a

body, he sent them to Haji Bektash, a Turkish saint, famous for his miracles and prophecies, desiring him to bestow on them a banner, to pray to God for their success, and to give them a name. The saint, when they appeared in his presence, put the sleeve of his gown upon one of their heads, and said, Let them be called 'yengicheri.' Let their countenance be ever bright, their hands victorious, their sword keen; let their spear always hang over the heads of their enemies, and wherever they go, may they return with a shining face." History of the Ottoman Empire, p. 38. The number of janizaries, at the first institution of the body, was not considerable. Under Solyman, in the year 1521, they amounted to twelve thousand. Since that time their number has greatly increased. Marsigli Etat, etc. ch. xvi. p. 68. Though Solyman possessed such abilities and authority as to restrain this formidable body within the bounds of obedience, yet its tendency to limit the power of the sultans was even in that age foreseen by sagacious observers. Nicolas Daulphinois, who accompanied M. d'Aramon, ambassador from Henry the second of France to Solyman, published an account of his travels, in which he describes and celebrates the discipline of the janizaries, but at the same time predicts that they would one day become formidable to their masters, and act the same part at Constantinople as the pretorian bands had done at Rome. Collection of Voyages from the earl of Oxford's library, vol. i. p. 599.

Note XLV. Sect. III. p. 172, a.

Solyman the magnificent, to whom the Turkish historians have given the surname of 'canuni,' or instituter of rules, first brought the finances and military establishment of the Turkish empire into a regular form. He divided the military force into the 'capiculy' or soldiery of the porte, which was properly the standing army, and 'serrataculy' or soldiers appointed to

guard the frontiers. The chief strength of the latter consisted of those who held timariots and ziams. These were portions of land granted to certain persons for life, in much the same manner as the military fiefs among the nations of Europe, in return for which military service was performed. Solyman, in his 'canunamé,' or book of regulations, fixed with great accuracy the extent of these lands in each province of his empire, appointed the precise number of soldiers each person who held a timariot or a ziam should bring into the field, and established the pay which they should receive, while engaged in service. Count Marsigli and sir Paul Rycaut have given extracts from this book of regulations, and it appears that the ordinary establishment of the Turkish army exceeded an hundred and fifty thousand men. When these were added to the soldiery of the porte, they formed a military power greatly superior to what any christian state could command in the sixteenth century. Marsigli, Etat Militaire, etc. p. 136. Rycaut's State of the Ottoman Empire, book iii. ch. ii. As Solyman, during his active reign, was engaged so constantly in war, that his troops were always in the field, the 'serrataculy' became almost equal to the janizaries themselves in discipline and valour.

It is not surprising, then, that the authors of the sixteenth century should represent the Turks as far superior to the christians, both in the knowledge and in the practice of the art of war. Guicciardini informs us, that the Italians learned the art of fortifying towns from the Turks. Histor. lib. xv. p. 266. Busbequius, who was ambassador from the emperor Ferdinand to Solyman, and who had opportunity to observe the state both of the christian and Turkish armies, published a discourse concerning the best manner of carrying on war against the Turks, in which he points out, at great length, the immense advantages which the infidels possessed with respect to discipline, and mili-

tary improvements of every kind. Busbequii Opera, edit. Elzevir, p. 393, etc. The testimony of other authors might be added, if the matter were in any degree doubtful.

Before I conclude these Proofs and Illustrations, I ought to explain the reason of two omissions in them; one of which it is necessary to mention on my own account, the other to obviate an objection to this part of the work.

In all my inquiries and disquisitions concerning the progress of government, manners, literature, and commerce, during the middle ages, as well as in my delineations of the political constitution of the different states of Europe at the opening of the sixteenth century, I have not once mentioned M. de Voltaire, who, in his 'Essai sur l'Histoire générale,' has reviewed the same period, and has treated of all these subjects. This does not proceed from inattention to the works of that extraordinary man, whose genius, no less enterprising than universal, has attempted almost every different species of literary composition. In many of these he excels. In all, if he had left religion untouched, he is instructive and agreeable. But as he seldom imitates the example of modern historians in citing the authors from whom they derived their information, I could not, with propriety, appeal to his authority in confirmation of any doubtful or unknown fact. I have often, however, followed him as my guide in these researches; and he has not only pointed out the facts with respect to which it was of importance to inquire, but the conclusions which it was proper to draw from them. If he had, at the same time, mentioned the books which relate these particulars, a great part of my labour would have been unnecessary, and many of his readers, who now consider him only as an entertaining and lively writer, would find that he is a learned and well-informed historian.

As to the other omission, every intelligent reader

must have observed, that I have not entered, either in the historical part of this volume, or in the Proofs and Illustrations, into the same detail with respect to the ancient laws and customs of the British kingdoms, as concerning those of the other European nations. As the capital facts with regard to the progress of government and manners in their own country are known to most of my readers, such a detail appeared to me to be less essential. Such facts and observations, however, as were necessary towards completing my design in this part of the work I have mentioned under the different articles which are the subjects of my disquisitions. The state of government in all the nations of Europe, having been nearly the same during several ages, nothing can tend more to illustrate the progress of the English constitution, than a careful inquiry into the laws and customs of the kingdoms on the continent. This source of information has been too much neglected by the English antiquaries and lawyers. Filled with admiration of that happy constitution now established in Great Britain, they have been more attentive to its forms and principles, than to the condition and ideas of remote times, which in almost every particular differ from the present. While engaged in perusing the laws, charters, and early historians of the continental kingdoms, I have often been led to think that an attempt to illustrate the progress of English jurisprudence and policy, by a comparison with those of other kingdoms in a similar situation, would be of great utility, and might throw much light on some points which are now obscure, and decide others, which have been long controverted.

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INDEX

TO

THE HISTORY OF THE REIGN

OF

CHARLES THE FIFTH.

N. B.—The Roman numerals direct to the volume of this edition of Dr. Robertson's works, and the figures to the page.

ABSOLUTION, the form of that used by father Tetzel in Germany, iii. 252, k.

Adorni, the faction of, assists the imperial general Colonna in the reduction of Genoa, iii. 318.

Adrian of Utrecht made preceptor to Charles the fifth, under William de Croy, lord of Chièvres, iii. 195. his character, ibid. sent by Charles with power to assume the regency of Castile on the death of his grandfather, 200. his claim admitted by cardinal Ximenes, and executed in conjunction, ibid. authorized by Charles to hold the cortes of Valencia, which refuses to assemble before him, 235. made viceroy of Castile on the departure of Charles for Germany, 237. his election remonstrated against by the Castilians, 238. is chosen pope, 315. retrospect of his conduct in Spain during the absence of Charles, 325. sends Ronquillo to reduce the Segovians, who repulse him, ibid. sends Fonseca to besiege the city, who is repulsed by the inhabitants of Medina del Campo, 326, 327. apologizes for Fonseca's conduct to the people, 327. recalls Fonseca, and dismisses his troops, ibid. his authority disclaimed by the holy junta, 329. deprived of power by them, 331. his ill reception on his arrival at Rome on being chosen to the papacy, 354. restores the territories acquired by his predecessor, ibid. labours to unite the contending powers of Europe, 355. publishes a bull for three years' truce among them, 356. accedes to the league against the French king, ibid. his death, 362. the sentiments and behaviour of the people on that occasion, ibid. a retrospect of his conduct towards the reformers, 371. his brief to the diet of Nuremberg, 372. receives a list of grievances from the diet, 374. his conduct to the reformers, how esteemed at Rome, 375, 376.

Africa, the Spanish troops sent by cardinal Ximenes against Barbarossa defeated there, iii. 208. the shocking devastations made there by the Vandals, v. 184.

Aigues-mortes, interview between the emperor Charles and Francis there, iv. 114.

Aix-la-Chapelle, the emperor Charles crowned there, iii. 248. Ferdinand his brother crowned king of the Romans there, iv. 40.

Alanus, his character of the clergy in his time, v. 215.

Alarcon, don Ferdinand, Francis the first, of France, taken prisoner at the battle of Pavia, committed to his custody, iii. 392. conducts Francis to Spain, 401. delivers up Francis in pursuance of the treaty of Madrid, 415. is sent ambassador to Francis to require the fulfilment of his treaty, 429. pope Clement the seventh taken prisoner by the imperialists, is committed to his custody, 447.

Albany, John Stuart, duke of, commands the French army sent by Francis the first to invade Naples, iii. 388.
Albert of Brandenburg, grand master of the Teutonic order, becomes a convert to the doctrines of Luther, iii. 425. obtains of Sigismund, king of Poland, the investiture of Prussia, erected into a dutchy, ibid. is put under the ban of the empire, ibid. His family fixed in the inheritance of Prussia, ibid. commands a body of troops in behalf of Maurice of Saxony, but endeavours to assert an independency, iv. 402, 403. defeats and takes the duke d'Aumale prisoner, and joins the emperor at Metz, v. 8. is condemned by the imperial chamber for his demands on the bishops of Bamberg and Wurtzburg, 17. a league formed against him, ibid. is defeated by Maurice, 18. is again defeated by Henry of Brunswick, 20. is driven out of Germany, and dies in exile, ibid. his territories restored to his collateral heirs, ibid.
Albert, elector of Mentz, the publication of indulgences in Germany committed to him, iii. 251, 252.
Alexander the sixth, pope, remarks on the pontificate of, iii. 273, 274.
Alexander de' Medici. See Medici.
Alfred the great, his complaint of the ignorance of the clergy, v. 215.
Allodial, possession of land, explained, v. 197. how such possession became subject to military service, ibid. distinguished from beneficiary tenures, 199. how converted into feudal tenures, 202.
Allodium, the etymology of that word, v. 208.
Algiers, how it was seized by Barbarossa, iv. 68, 69. is seized by the brother of the same name, on the death of the former, ibid. is taken under the protection of the porte, 70. is governed by Hascen agà in the absence of Barbarossa, 166. is besieged by the emperor Charles the fifth, 168. Charles forced to reembark by bad weather, 172.
Alraschid, brother of Muley-Hascen, king of Tunis, solicits the protection of Barbarossa against him, iv. 71. his treacherous treatment by Barbarossa, ibid.
Alva, duke of, adheres to Ferdinand of Aragon, in his dispute with the archduke Philip concerning the regency of Castile, iii. 182. forces the dauphin to abandon the siege of Perpignan, iv. 180. presides at the court-martial which condemns the elector of Saxony to death, 305. detains the landgrave prisoner by the emperor's order, 314. commands, under the emperor, the army destined against France, v. 7. is appointed commander-in-chief in Piedmont, 51. enters the ecclesiastical territories and seizes the Campagna Romana, 96. concludes a truce with the pope, ibid. negotiates a peace between Philip and the pope, with cardinal Caraffa, 118. goes to Rome to ask pardon of the pope for his hostilities, 119. is sent to Paris in the name of Philip to espouse the princess Elizabeth, 152.
Amerstorff, a nobleman of Holland, associated by Charles the fifth with cardinal Ximenes in the regency of Castile, iii. 207.
Ammianus, his character of the Huns, v. 185.
Amurath, Sultan, the body of janizaries formed by him, iii. 170.
Anabaptists, the origin of that sect deduced, iv. 53. their principal tenets, 54. their settlement at Munster, 55. character of their principal leaders, ibid. they seize the city of Munster, 56. they establish a new form of government there, ibid. choose Boccold king, 58. their licentious practices, 59, 60. a confederacy of the German princes formed against them, 60. are blockaded in Munster by the bishop, 61. the city taken, and great slaughter made of them, 62. their king put to death, ibid. character of the sect since that period, 63. See Matthias and Boccold.
Anathema, form of that denounced against robbers during the middle ages, v. 307, 308.
Angleria, his authority cited in proof of the extortions of the Flemish ministers of Charles the fifth, iii. 217.
Anhalt, prince of, avows the opinions of Martin Luther, iii. 371.
Annats to the court of Rome, what, iii. 284.
Arabia, the ancient Greek philosophy cultivated there, while lost in Europe, v. 299. the progress of philosophy from thence to Europe, 300.
Aragon, rise of the kingdom of, iii. 131. its union with Castile, ibid. the con-

stitution and form of its government, 135. the privileges of its cortes, ibid. office and jurisdiction of the justiza, 136, 137. the regal power very confined, 137. form of the allegiance sworn to the kings of, ibid. how Ferdinand became possessed of that kingdom, iii. 176. the cortes of, acknowledge the archduke Philip's title to the crown, 177. ancient enmity between this kingdom and Castile, 180. Navarre added to this crown by the arts of Ferdinand, 191. arrival of Charles the fifth, 218. the cortes not allowed to assemble in his name, ibid. the refractory behaviour of the Aragonians, ibid. they refuse restitution of the kingdom of Navarre, 219. don John Lanuza appointed regent, on the departure of Charles for Germany, 237. who composes the disturbances there, 351. the moderation of Charles towards the insurgents on his arrival in Spain, 353. See Spain. the power of the nobility to control the regal power, v. 321. their privilege of union taken away by Peter the fourth, ibid. the establishment of the inquisition opposed there, 324.

Ardres, an interview there between Francis the first and Henry the eighth of England, iii. 247.

Armies, standing, the rise of, traced, iii. 84. by what means they became more general in Europe, 101.

Arms, the profession of, the most honourable in uncivilized nations, iii. 61.

Ass, an account of the ancient Romish feast of, v. 219.

Assemblies, legislative, how formed, iii. 32.

Assemblies, general, of France, their power under the first race of kings, iii. 148. under the second and third, ibid. at what period they lost their legislative authority, 149.

Asturias, Charles, son of Philip and Joanna, acknowledged prince of, by the cortes of Castile, iii. 187.

Attila, king of the Huns, account of his reception of the Roman ambassadors, v. 180. some account of his conquests, 185.

Augsburg, a diet called there by Charles the fifth, iv. 35. his public entry into that city, ibid. the confession of faith named from this city, drawn up by Melancthon, ibid. resolute behaviour of the protestant princes at, 36. the diet again assembled there, iv. 321. is intimidated by being surrounded by the emperor's Spanish troops, ibid. the emperor reestablishes the Roman worship in the churches of, ibid. the diet, by the emperor's order, petitions the pope for the return of the council to Trent, 327. a system of theology laid before the diet by the emperor, 330, 331. the archbishop of Mentz declares, without authority, the diet's acceptance of it, 332. its form of government violently altered and rendered submissive to the emperor, 338. the diet reassembled there, 350. the diet takes part with the emperor against the city of Magdeburg, 357. is seized by Maurice of Saxony, 392. another diet at, opened by Ferdinand, v. 57. cardinal Morone attends the diet as the pope's nuncio, 58. Morone departs on the pope's death, 60. recess of the diet on the subject of religion, 63. remarks on this recess, 64.

Austria, the house of, by whom founded, iii. 159. by what means the house of, became so formidable in Germany, 449. the extraordinary acquisitions of the house of, in the person of the emperor Charles the fifth, v. 155.

Avila, an assembly of Castilian nobles there, solemnly try and depose Henry the fourth, their king, iii. 134. a convention of the malecontents in Spain held there, 329. a confederacy termed the 'holy junta,' formed there, ibid. which disclaims the authority of Adrian, ibid. the holy junta removed to Tordesillas, 330. See Junta.

Baillis, in the old French law, their office explained, v. 286.

Balance of power, the first rise of, in Europe, iii. 100. the progress of, 101.

Baltic, the first source of wealth to the towns situated on that sea, v. 313.

Barbarossa, Horuc; his rise to the kingdom of Algiers and Tunis, iii. 208, 209. defeats the Spanish troops sent against him by cardinal Ximenes, iv. 209. his parentage, 68. commences pirate with his brother Hayradin, ibid. how he acquired possession of Algiers, 68, 69. infests the coasts of Spain, 69. is reduced and killed by Comares, the Spanish governor of Oran, ibid.

Barbarossa, Hayradin, brother to the former of the same name, takes possession of Algiers on his brother's death, iv. 69. puts his dominions under the pro-

tection of the grand seignior, 70. obtains the command of the Turkish fleet, ibid. his treacherous treatment of Alraschid, brother to the king of Tunis, 71. seizes Tunis, 72. extends his depredations by sea, ibid. prepares to resist the emperor's armament against him, 74. Goletta and his fleet taken, 75. is defeated by Charles, 76, 77. Tunis taken, 77. makes a descent on Italy, 189. burns Rheggio, ibid. besieges Nice in conjunction with the French, but is forced to retire, 189, 190. is dismissed by Francis, 200.

Barbary, a summary review of the revolutions of, iv. 66, 67. its division into independent kingdoms, ibid. rise of the piratical states, 67, 68. See Barbarossa.

Barcelona, the public entry of the emperor Charles the fifth into that city as its count, iv. 27. its trade, riches, and privileges, at the close of the fifteenth century, v. 328.

Barons, their independence, and mutual hostilities, under the feudal system, iii. 14. how affected by the enfranchisement of cities, 31. acquire a participation in legislative government, 33. their private wars for redress of personal injuries, 39. methods employed to abolish these contentions, 41. origin of their supreme and independent jurisdiction, 51. the bad effects resulting from these privileges, 53. the steps taken by princes to reduce their courts, 54. how obliged to relinquish their judicial prerogatives, 62. of Italy, subjected to municipal laws, 229. their right of territorial jurisdiction explained, 281. their emoluments from causes decided in their courts, 282.

Bayard, Chevalier, his character, iii. 305. his gallant defence of Mézières besieged by the imperialists, ibid. obliges them to raise the siege, ibid. his noble behaviour at his death, 368, 369. his respectful funeral, 369.

Bellay, M. his erroneous account of the education of Charles the fifth corrected, iii. 194, g. his account of the disastrous retreat of the emperor Charles the fifth, from his invasion of Provence, iv. 104.

Benefices, under the feudal system, a history of, v. 200. when they became hereditary, 202.

Bible, a translation of, undertaken by Martin Luther, and its effects in opening the eyes of the people, iii. 370, 371.

Bicocca, battle of, between Colonna and maréchal Lautrec, iii. 317.

Boccold or Beukles, John, a journeyman tailor, becomes a leader of the anabaptists at Munster, iv. 55. succeeds Matthias in the direction of their affairs, 58. his enthusiastic extravagancies, ibid. is chosen king, ibid. marries fourteen wives, 59. beheads one of them, 62. is put to a cruel death at the taking of Munster, ibid. See Anabaptists.

Bohemia, the archduke Ferdinand chosen king of, iii. 448. Ferdinand encroaches on the liberties of the Bohemians, iv. 319. the reformation introduced by John Huss and Jerome of Prague, ibid. raise an army to no purpose, 319, 320.

Bonnivet, admiral of France, appointed to command the invasion of Milan, iii. 361. his character, ibid. enables Colonna to defend the city of Milan by his imprudent delay, 362. forced to abandon the Milanese, 367, 368. is wounded, and his army defeated by the imperialists, 368. stimulates Francis to an invasion of the Milanese, 383. advises Francis to besiege Pavia, 385. advises him to give battle to Bourbon, who advanced to the relief of Pavia, 390. is killed at the battle of Pavia, 391.

Bologna, an interview between the emperor Charles the fifth, and pope Clement the seventh there, iv. 28. treaties of Charles with the Italian states published there, 30. another meeting between the emperor and the pope, 44.

Books, an inquiry into the materials of the ancient ones, v. 215. the loss of old manuscripts accounted for, 216. the great prices they sold for in ancient times, 217.

Boroughs, representatives of, how introduced into national councils, iii. 33.

Bouillon, Robert de la Mark, lord of, declares war against the emperor Charles, at the instigation of Francis the second, iii. 303. is ordered by Francis to disband his troops, 304. his territories reduced by the emperor, ibid.

Boulogne, besieged by Henry the eighth of England, iv. 205. taken, 212.

Bourbon, Charles, duke of, his character, iii. 357. the causes of his discontent

with Francis the first, ibid. his dutchess dies, 358. rejects the advances of Louisa, the king's mother, ibid. his estate sequestered by her intrigues, 359. negotiates secretly with the emperor, ibid. is included in a treaty between the emperor and Henry the eighth of England, ibid. is taxed by the king with betraying him, which he denies, 360. escapes to Italy, 361. directs the measures of the imperial army under Lannoy, 367. defeats the French on the banks of the Sessia, 368. instigates Charles to an invasion of France, 379. advances to the relief of Pavia, 389. defeats Francis, and takes him prisoner, 391, 392. hastens to Madrid to secure his own interests in the interview between Charles and Francis, 403. his kind reception by Charles, 409. obtains a grant of the dutchy of Milan, and is made general of the imperial army, 410. obliges Sforza to surrender Milan, 432. is forced to oppress the Milanese to satisfy his troops mutinying for pay, 436. sets Morone at liberty, and makes him his confidant, ibid. appoints Leyva governor of Milan, and advances to invade the pope's territories, 438. his disappointed troops mutiny, 439. he determines to plunder Rome, 442. arrives at Rome and assaults it, 443, 444. is killed, 444.

Brandenburg, elector of, avows the opinions of Luther, iii. 371. Albert of. See Albert.

Britons, ancient, their distress and dejection when deserted by the Romans, and harassed by the Picts and Caledonians, v. 179.

Brotherhood of God, an account of that association for extinguishing private wars, v. 261.

Bruges, a league concluded there between the emperor and Henry the eighth of England against France, iii. 307. how it became the chief mart for Italian commodities during the middle ages, v. 312.

Brunswick, duke of, avows the opinions of Luther, iii. 371.

Brunswick, Henry, duke of, driven from his dominions by the protestant princes of the league of Smalkalde, iv. 194. raises men for Francis, but employs them to recover his own dominions, 223. is taken prisoner, ibid.

Buda, siege of, by Ferdinand, king of the Romans, iv. 163. is treacherously seized by sultan Solyman, 164.

Burgundy, Mary, heiress of, the importance with which her choice in a husband was considered by all Europe, iii. 94. the treacherous views of Louis the eleventh of France towards her, 95. is married to the archduke Maximilian, 96. the influence of this match on the state of Europe, ibid.

Cæsar, his account of the ancient Germans, compared with that of Tacitus, v. 189.

Cajetan, cardinal, the pope's legate in Germany, appointed to examine the doctrines of Martin Luther, iii. 260. requires Luther peremptorily to retract his errours, ibid. requires the elector of Saxony to surrender or banish Luther, 262. his conduct justified, 262, 263.

Calais, an ineffectual congress there, between the emperor and Francis, under the mediation of Henry the eighth, iii. 305, 306. the careless manner in which it was guarded in the reign of Mary queen of England, v. 124. ineffectual remonstrances of Philip and lord Wentworth the governor, concerning its defenceless state, ibid. is invested and taken by the duke of Guise, 125. the English inhabitants turned out, 126. stipulations concerning, in the treaty of Chateau Cambresis, 149.

Calatrava, military order of, in Spain, zealous to employ their prowess in defence of the honours of the Virgin Mary, v. 330. the vow used by these knights, ibid.

Cambray, treaty of, its object, iii. 105. the confederacy dissolved, 107. articles of the peace concluded there, between the emperor Charles, and Francis of France, iv. 22, 23. remarks on this treaty, 23, 24.

Campe, peace of, between Henry the eighth, and Francis, iv. 249.

Campeggio, cardinal, made legate from pope Clement the seventh to the second diet at Nuremburg, iii. 377. publishes articles for reforming the inferior clergy, 378. advises Charles to rigorous measures against the protestants, iv. 37.

Canon law, an inquiry into, iii. 56. progress of ecclesiastical usurpations, 57. the maxims of, more equitable than the civil courts of the middle ages, 58.

Capitulation of the Germanic body signed by Charles the fifth, and prescribed to all his successors, iii. 231.
Caraffa, cardinal, his precipitate election, v. 72. is appointed legate to Bologna, ibid. reasons of his disgust with the emperor, 72, 73. persuades the pope to solicit an alliance with France against the emperor, 74. his insidious commission to the court of France, 90, 91. his public entry into Paris, 91. exhorts Henry to break his truce with the emperor, 91, 92. absolves Henry from his oath, 93. negotiates a peace between the pope and Philip, with the duke d'Alva, 118. the fate of him and his brother on the death of pope Paul, 152.
Carlostadius, imbibes the opinions of Martin Luther, at Wittemberg, iii. 269. his intemperate zeal, 369. awed by the reproofs of Luther, 370.
Carignan, besieged by the count d'Enguin, and defended by the marquis del Guasto, iv. 200. Guasto defeated in a pitched battle, 202. the town taken, 203.
Castaldo, marquis of Piadeno. See Piadeno.
Castile, rise of the kingdom of, iii. 131. its union with Aragon, ibid. its king, Henry the fourth, solemnly tried and deposed in an assembly of the nobles, 134. the constitution and government of that kingdom, 138. a history of the cortes of, and its privileges, 138, 139. how Isabella became possessed of that kingdom, iii. 176. the archduke Philip's title acknowledged by the cortes of that kingdom, 177. Isabella dies, and leaves her husband Ferdinand of Aragon regent, 179. Ferdinand resigns the crown of, 180. Ferdinand acknowledged regent by the cortes, ibid. enmity between this kingdom and Aragon, ibid. the particular dislike of the Castilians to Ferdinand, 180, 181. the regency of, jointly vested in Ferdinand, Philip, and Joanna, by the treaty of Salamanca, 185. declares against Ferdinand, ibid. the regency of, resigned by Ferdinand to Philip, 186. Philip and Joanna acknowledged king and queen by the cortes, 187. death of Philip, ibid. the perplexity of the Castilians on Joanna's incapacity for government, 188. Ferdinand gains the regency and the good-will of the Castilians by his prudent administration, 190, 191. Oran and other places in Barbary annexed to this kingdom by Ximenes, 191. Ximenes appointed regent by Ferdinand's will until the arrival of Charles the fifth, 197. Charles assumes the regal title, 200. Ximenes procures its acknowledgment, 201. the nobility depressed by Ximenes, 202. the grandees mutiny against Ximenes, 204. the mutiny suppressed, ibid. Ximenes resumes the grants made by Ferdinand to the nobles, 204, 205. the bold reply of Ximenes to the discontented nobles, 206. other associates in the regency appointed with Ximenes at the instigation of the Flemish courtiers, 207. Ximenes dies, 215. Charles acknowledged king by the cortes, on his arrival, with a reservation in favour of his mother Joanna, 215, 216. the Castilians receive unfavourable impressions of him, 216. disgusted by his partiality to his Flemish ministers, 216, 217. Sauvage made chancellor, 217. William de Croy appointed archbishop of Toledo, ibid. the principal cities confederate, and complain of their grievances, 219. the clergy of Castile refuse to levy the tenth of benefices granted by the pope to Charles the fifth, 233. interdicted, but the interdict taken off by Charles's application, 233, 234. an insurrection there, 236. increase the disaffection, 237. cardinal Adrian appointed regent, on the departure of Charles for Germany, ibid. the views and pretensions of the commons in their insurrections, 327, 328. the confederacy called the 'holy junta' formed, 329. the proceedings of which are carried on in the name of queen Joanna, 331. receives circulatory letters from Charles for the insurgents to lay down their arms, with promises of pardon, 332. the nobles undertake to suppress the insurgents, 236. raise an army against them under the Conde de Haro, 338, 339. Haro gets possession of Joanna, 339. expedients by which they raise money for their troops, 340, 341. unwilling to proceed to extremities with the junta, 341, 342. the army of the junta routed, and Padilla executed, 344, 345. dissolution of the junta, 346. the moderation of Charles towards the insurgents on his arrival in Spain, 353. he acquires the love of the Castilians, 354. the kingdom originally elective, v. 325. See Spain.

Catalonia, the spirited behaviour of the people there in defence of their rights, against their king, John the second of Aragon, v. 134.
Catharine of Aragon, is divorced from Henry the eighth of England, iv. 50. dies, 119.
Catharine à Boria, a nun, flies from her cloister, and marries Martin Luther, iii. 424.
Catharine de' Medici. See Medici.
Cavi, peace concluded there between pope Paul the fourth and Philip the second of Spain, v. 118.
Censuales, a species of the Oblati, or voluntary slaves, the obligations they entered into, described, v. 251.
Centenarii, or inferior judges in the middle ages, the extraordinary oath required from them, v. 307.
Cereamp, negotiations for peace entered into there, between Philip the second of Spain and Henry the second of France, v. 136, 143. the negotiations removed to Chateau Cambresis. See Chateau Cambresis.
Champ de Mars and de Mai, account of those assemblies of the ancient Gauls, v. 334.
Characters of men, rules for forming a proper estimate of them, iv. 233, 234. applied to the case of Luther, ibid.
Charlemagne, his law to prevent private wars for redress of personal injuries, iii. 41. state of Germany under his descendants, 155.
Charles the fourth, his observations on the manners of the clergy, in his letter to the archbishop of Mentz, iii. 275, g. emperor, dissipates the imperial domains, v. 353.
Charles the fifth, emperor, an emulator of the heroic conduct of his rival, Francis the first, iii. 65. his future grandeur founded on the marriage of the archduke Maximilian with the heiress of Burgundy, 96. his descent and birth, 175. how he came to inherit such extensive dominions, 175, 176. acknowledged prince of Asturias by the cortes of Castile, 187. his father Philip dies, ibid. jealousy and hatred of his grandfather Ferdinand towards him, 192. left heir to his dominions, 193. death of Ferdinand, ibid. his education committed to William de Croy, lord of Chièvres, 194. Adrian of Utrecht appointed to be his preceptor, 195. the first opening of his character, 196. assumes the government of Flanders, and attends to business, ibid. sends cardinal Adrian to be regent of Castile, who executes it jointly with Ximenes, 199. assumes the regal title, 200, 201. his title admitted with difficulty by the Castilian nobility, 202. persuaded to add associate regent to Ximenes, 207. his Flemish court corrupted by the avarice of Chièvres, 209. persuaded by Ximenes to visit Spain, but how that journey is retarded, 210. the present state of his affairs, ibid. concludes a peace at Noyon with Francis the first of France, and the conditions of the treaty, 211. arrives in Spain, 213. his ungrateful treatment of Ximenes, 214. his public entry into Valladolid, 215. is acknowledged king by the cortes, who vote him a free gift, 215, 216. the Castilians receive unfavourable impressions of him, 216. disgusts them by his partiality to his Flemish ministers, 216, 217. sets out for Aragon, 217. sends his brother Ferdinand to visit their grandfather Maximilian, 218. cannot assemble the cortes of Aragon in his own name, ibid. the opposition made by that assembly to his desires, ibid. refuses the application of Francis the first for restitution of the kingdom of Navarre, 219. neglects the remonstrances of the Castilians, 220. death of the emperor Maximilian, ibid. view of the present state of Europe, 220, 221. how Maximilian was obstructed in securing the empire to him, 221. Francis the first aspires to the imperial crown, ibid. circumstances favourable to the pretensions of Charles, 222. the Swiss cantons espouse his cause, 225. apprehensions and conduct of pope Leo the tenth on the occasion, 226, 227. assembling of the diet at Frankfort, 227. Frederic duke of Saxony refuses the offer of the empire, and votes for him, 228, 229. and refuses the presents offered by his ambassadors, 229. concurring circumstances which favoured his election, 230. his election, 231. signs and confirms the capitulation of the Germanic body, ibid. the election notified to him, 232. assumes the title of 'majesty,' ibid. accepts the imperial dig-

nity offered by the count palatine, ambassador from the elector, 233. the clergy of Castile refuse the tenth of benefices granted him by the pope, ibid. procures the interdict the kingdom is laid under for refusal, to be taken off, 234. empowers cardinal Adrian to hold the cortes of Valencia, 235. the nobles refuse to assemble without his presence, ibid. authorizes the insurgents there to continue in arms, ibid. summons the cortes of Castile to meet in Galicia, ibid. narrowly escapes with his Flemish ministers from an insurrection on that account, 236. obtains a donative from the cortes, 237. prepares to leave Spain, and appoints regents, ibid. embarks for the Low Countries, 238. motives of this journey, 239. rise of the rivalship between him and Francis the first, 239, 240. courts the favour of Henry the eighth of England, and his minister cardinal Wolsey, 245. visits Henry at Dover, 246. promises Wolsey his interest for the papacy, 247. has a second interview with Henry at Gravelines, 248. offers to submit his differences with Francis to Henry's arbitration, ibid. his magnificent coronation at Aix-la-Chapelle, ibid. calls a diet at Worms, to check the reformers, 249. causes which hindered his espousing the party of Martin Luther, 291, 292. grants Luther a safe-conduct to the diet of Worms, 292. an edict published against him, 293. his embarrassment at this time, 296. concludes an alliance with the pope, 299. the conditions of the treaty, 300. death of his minister Chièvres, and its advantages to him, 300, 301. invasion of Navarre by Francis, 301, 302. the French driven out, and their general, l'Esparre, taken prisoner, 303. war declared against him by Robert de la Mark, lord of Bouillon, who ravages Luxemburg, 303, 304. reduces Bouillon, and invades France, 304. his demands at the congress at Calais, 306. has an interview with cardinal Wolsey at Bruges, and concludes a league with Henry the eighth against France, 307. pope Leo declares for him against France, 310. the French driven out of Milan, 313, 317. visits England in his passage to Spain, 319. cultivates the good-will of cardinal Wolsey, and creates the earl of Surrey his high admiral, ibid. grants the island of Malta to the knights of St. John, expelled from Rhodes by Solyman the magnificent, 322. arrives in Spain, 323. a retrospect of his proceedings in relation to the insurrections in Spain, 332. issues circulatory letters for the insurgents to lay down their arms, with promises of pardon, ibid. his prudent moderation towards the insurgents on his arrival in Spain, 353. acquires the love of the Castilians, 354. enters into a league with Charles duke of Bourbon, 359. why he did not endeavour to get Wolsey elected pope, 363, 364. invades Guienne and Burgundy, but without success, 366. his troops in Milan mutiny for want of pay, but are pacified by Morone, 367. undertakes an invasion of Provence, 379, 380. orders Pescara to besiege Marseilles, 381. Pescara obliged to retire, ibid. disconcerted by the French overrunning the Milanese again, 384. the revenues of Naples mortgaged to raise money, ibid. his troops defeat Francis, and take him prisoner at the battle of Pavia, 391, 392. his affected moderation at receiving the news, 393. avails himself of a treaty concluded between Lannoy and pope Clement, but refuses to ratify it, 397, 398. his army in Pavia mutiny, and are obliged to be disbanded, 398. his deliberations on the proper improvement of his advantages, 399. his propositions to Francis, 400. after many delays grants Sforza the investiture of Milan, 403. Morone's intrigues betrayed to him by Pescara, 406. orders Pescara to continue his negotiations with Morone, ibid. his rigorous treatment of Francis, 407, 408. visits Francis, 408. his kind reception of the duke of Bourbon, 409. grants Bourbon the dutchy of Milan, and appoints him general-in-chief of the imperial army there, 410. fruitless negotiations for the delivery of Francis, 410, 411. treaty of Madrid with Francis, 412, 413. delivers up Francis, 415. marries Isabella of Portugal, 416. an alliance formed against him at Cognac, 427. sends ambassadors to Francis to require the fulfilment of the treaty of Madrid, 429. prepares for war against Francis, 430. the pope reduced to an accommodation with him, 434. the exhausted state of his finances, 435. his troops under Bourbon distressed and mutinous for want of pay, 436. Bourbon assaults Rome, and is slain, but the city taken, 443, 444. the prince of Orange general on Bourbon's death, takes the castle of St. Angelo, and the

pope prisoner, 446, 447. the emperor's conduct on that occasion, 447. his dissensions with the pope, how far favourable to the reformation, 449. his instructions to the diet at Spires, ibid. his manifesto against the pope, and letter to the cardinals, 450. France and England league against him, iv. 2. is refused supplies by the cortes of Castile, 7. delivers the pope for a ransom, ibid. his overtures to Henry and Francis, 8. their declaration of war against him, 9, 10. is challenged by Francis to single combat, 10. Andrew Doria revolts from Francis to him, 14. his forces defeat the French in Italy, 17, 20. his motives for desiring an accommodation, 20. concludes a separate treaty with the pope, 21. terms of the peace of Cambray, concluded with Francis by the mediation of Margaret of Austria and Louise of France, 22. remarks on the advantages gained by him in this treaty, and on his conduct of the war, 23. visits Italy, 27. his policy on his public entry into Barcelona, ibid. has an interview with the pope at Bologna, 28. motives for his moderation in Italy, 28, 29. his treaties with the states of, 29. is crowned king of Lombardy and emperor of the Romans, 30. summons a diet at Spires to consider the state of religion, 32. his deliberations with the pope respecting the expediency of calling a general council, 34. appoints a diet at Augsburg, 35. makes a public entry into that city, ibid. his endeavours to check the reformation, 35, 36. resolute behaviour of the protestant princes towards him, 36. his severe decree against the protestants, 37. proposes his brother Ferdinand to be elected king of the Romans, 38. is opposed by the protestants, 39. obtains his election, 40. is desirous of an accommodation with the protestants, 41. concludes a treaty with them at Nuremburg, 42. raises an army to oppose the Turks under Solyman, and obliges him to retire, 43, 44. has another interview with the pope, and presses him to call a general council, 44, 45. procures a league of the Italian states to secure the peace of Italy, 47. arrives at Barcelona, ibid. his endeavours to prevent the negotiations and meeting between the pope and Francis, 49. undertakes to expel Barbarossa from Tunis, and restore Muley-Hascen, 73. lands in Africa, and besieges Goletta, 74. takes Goletta, and seizes Barbarossa's fleet, 75. defeats Barbarossa, and takes Tunis, 76, 77. restores Muley-Hascen; and the treaty between them, 78. the glory acquired by this enterprise, and the delivery of the christian captives, 79. seizes the dutchy of Milan on the death of Francis Sforza, 91. his policy with regard to it, ibid. prepares for war with Francis, 92. his invective against Francis at Rome before the pope in council, 93. remarks on this transaction, 95, 96. invades France, 97. enters Provence, and finds it desolated, 101. besieges Marseilles and Arles, 102. his miserable retreat from Provence, 103, 104. his invasion of Picardy defeated, 105. is accused of poisoning the dauphin, 105, 106. improbability of its truth, 106. conjecture concerning the dauphin's death, ibid. Flanders invaded by Francis, 108. a suspension of arms in Flanders, how negotiated, ibid. a truce in Piedmont, 109. motives to these truces, ibid. negotiations for peace with Francis, 112. concludes a truce for ten years at Nice, 113. remarks on the war, 113, 114. an interview with Francis, 114. courts the friendship of Henry the eighth of England, 119. indulges the protestant princes, 120. quiets their apprehensions of the catholic league, 124. his troops mutiny, 126. assembles the cortes of Castile, 127. destroys the ancient constitution of the cortes, 128. instance of the haughty spirit of the Spanish grandees, 129. desires permission of Francis to pass through France to the Netherlands, 136. his reception in France, 136, 137. his rigorous treatment of Ghent, 138, 139. refuses to fulfil his engagements to Francis, 140. appoints a friendly conference between a deputation of catholic and protestant divines before the diet at Ratisbon, 157. result of this conference, 158. grants a private exemption from oppressions to the protestants, 160. undertakes to reduce Algiers, 166. is near being cast away by a violent storm, 168. lands near Algiers, ibid. his soldiers exposed to a violent tempest and rain, 169. his fleet shattered, 170. his fortitude under these disasters, 172. leaves his enterprise, and embarks again, ibid. is distressed with another storm at sea, ibid. takes advantage of the French invasion of Spain to obtain subsidies from the cortes, 181. his treaty with Portugal, ibid. concludes a league with Henry the

eighth, 183. particulars of the treaty, 184, 185. overruns Cleves, and his barbarous treatment of the town of Duren, 187. his behaviour to the duke of Cleves, ibid. besieges Landrecy, 188. is joined by an English detachment, ibid. is forced to retire, ibid. courts the favour of the protestants, 194. his negotiations with the protestants at the diet of Spires, 195. procures the concurrence of the diet in a war against Francis, 198. negotiates a separate peace with the king of Denmark, ibid. invades Champagne, and invests St. Disier, 204. Want of concert between his operations and those of Henry, who now invades France, 205. obtains St. Disier by artifice, 206. his distresses and happy movements, 207. concludes a separate peace with Francis, 208. his motives to this peace, 209, 211. his advantages by this treaty, 212. obliges himself by a private article to exterminate the protestant heresy, ibid. is cruelly afflicted with the gout, 214. diet at Worms, 215. arrives at Worms, and alters his conduct towards the protestants, 217, 218. his conduct on the death of the duke of Orleans, 221. his dissimulation to the landgrave of Hesse, 235. concludes a truce with Solyman, 239. holds a diet at Ratisbon, 240. his declaration to the protestant deputies, 242. his treaty with the pope, concluded by the cardinal of Trent, 243. his circular letter to the protestant members of the Germanic body, 244. the protestants levy an army against him, 250. is unprepared against them, 251. puts them under the ban of the empire, 253. the protestants declare war against him, 254. marches to join the troops sent by the pope, 257. Farnese, the pope's legate, returns in disgust, 258. his prudent declension of an action with the protestants, 260. is joined by his Flemish troops, 261. proposals of peace made by the protestants, 268. their army disperse, 270. his rigorous treatment of the protestant princes, 271. dismisses part of his army, 274. the pope recalls his troops, ibid. his reflection on Fiesco's insurrection at Genoa, 287. is alarmed at the hostile preparations of Francis, 291. death of Francis, 293. a parallel drawn between him and Francis, 293, 296. consequences of Francis's death to him, 297. marches against the elector of Saxony, ibid. passes the Elbe, 299. defeats the Saxon army, 302. takes the elector prisoner, ibid. his harsh reception of him, 303. invests Wittemberg, 304. condemns the elector to death by a court-martial, 306. the elector, by treaty, surrenders the electorate, 307. the harsh terms imposed by him on the landgrave of Hesse, 310. his haughty reception of the landgrave, 313. detains him prisoner, 314. seizes the warlike stores of the league, 318. his cruel exactions, ibid. assembles a diet at Augsburg, 321. intimidates the diet by his Spanish troops, ibid. reestablishes the Romish worship in the churches of Augsburg, ibid. seizes Placentia, 325. orders the diet to petition the pope for the return of the council to Trent, 327. protests against the council of Bologna, 329. causes a system of faith to be prepared for Germany, 330, 331. lays it before the diet, 332. the *Interim* opposed, 334. and rejected by the imperial cities, 337, 338. reduces the city of Augsburg to submission, 338. repeats the same violence at Ulm, 339. carries the elector and landgrave with him into the Low Countries, 340. procures his son Philip to be recognised by the states of the Netherlands, 342. establishes the interim there, ibid. reassembles the diet at Augsburg, under the influence of his Spanish troops, 350. the city of Magdeburgh refuses to admit the interim, and prepares for resistance, 257. appoints Maurice, elector of Saxony, to reduce it, ibid. promises to protect the protestants at the council of Trent, 359. arbitrarily releases Maurice and the elector of Brandenburg from their engagements to the landgrave for the recovery of his liberty, ibid. endeavours to secure the empire for his son Philip, 360. his brother Ferdinand refuses to resign his pretensions, 361, 362. besieges Parma, but is repulsed, 367. proceeds rigorously against the protestants, 369. endeavours to support the council of Trent, 370. puts Magdeburg under the ban of the empire, ibid. absolves the city, 374. is involved in disputes between the council and the protestant deputies concerning their safe-conduct, 376. begins to suspect Maurice of Saxony, 387. Maurice takes the field against him, 390. Maurice seconded by Henry the second of France, 391. his distress and consternation, 392. an ineffectual negotiation with Maurice, 393. flies from Inspruck, 397. releases the elector of Saxony, 398. is solicited to satisfy the demands of

Maurice, 405. his present difficulties, 406. refuses any direct compliance with the demands of Maurice, 408. is disposed to yield by the progress of Maurice's operations, 409. makes a peace with Maurice at Passau, 411. reflections on this treaty, 412. turns his arms against France, v. 3. lays siege to Metz, 7. is joined by Albert of Brandenburg, 8. his army distressed by the vigilance of the duke of Guise, 9. raises the siege, and retires in a shattered condition, 11. Cosmo de' Medici asserts his independency against him, 12. Siena revolts against him, ibid. is dejected at his bad success, 15. takes Terouene, and demolishes it, 21. takes Hesden, ibid. proposes his son Philip as a husband to Mary queen of England, 32. the articles of the marriage, 34, 35. marches to oppose the French operations, 41. is defeated by Henry, 42. invades Picardy, ibid. grants Siena, subdued by Cosmo de' Medici, to his son Philip, 50. a diet at Augsburg opened by Ferdinand, 57. leaves the interior administration of Germany to Ferdinand, 60. applies again to Ferdinand to resign his pretensions of succession to Philip, but is refused, 60, 61. recess of the diet of Augsburg on the subject of religion, 63. a treaty concluded between pope Paul the fourth and Henry the second of France against him, 78. resigns his hereditary dominions to his son Philip, ibid. his motives for retirement, 79, 80. had long meditated this resignation, 81. the ceremony of this deed, 82, 83. his speech on this occasion, 83, 85. resigns also the dominions of Spain, 86. his intended retirement into Spain retarded, 87. a truce for five years concluded with France, 88. endeavours in vain to secure the imperial crown for Philip, 98, 99. resigns the imperial crown to Ferdinand, 99. sets out for Spain, ibid. his arrival and reception in Spain, 100. is distressed by his son's ungrateful neglect in paying his pension, 101. fixes his retreat in the monastery of St. Justus in Placentia, 102. the situation of this monastery, and his apartments, described, ibid. contrast between the conduct of Charles and the pope, 103. his manner of life in his retreat, 137, 138. his death precipitated by his monastic severities, 139. celebrates his own funeral, 139, 140. dies, 140. his character, 140, 143. a review of the state of Europe during his reign, 153. his acquisitions to the crown of Spain, 156.

Charles the seventh of France, the first who introduced standing armies in Europe, iii. 84. his successful extension of the regal prerogative, 87.

Charles the eighth of France, his character, iii. 97. how induced to invade Italy, ibid. his resources and preparations for this enterprise, 98. his rapid success, 99. a combination of the Italian states formed against him, 100. is forced to return back to France, ibid. the distressed state of his revenues by this expedition, 105.

Charlevoix, his account of the North American Indians, made use of in a comparison between them and the ancient Germans, v. 193, 195.

Charters, of immunity or franchise, an inquiry into the nature of those granted by the barons of France to the towns under their jurisdictions, v. 232. of communities, granted by the kings of France, how they tended to establish regular government, iii. 29. and v. 233.

Chateau Cambresis, the conferences for peace between Philip the second of Spain and Henry the second of France, removed thither from Cercamp, v. 147. the peace retarded by the demand of Elizabeth of England for restitution of Calais, ibid. particulars of the treaty signed there between England and France, 149. terms of the pacification between Philip and Henry, 150, 151.

Cheregato, nuncio from the pope to the diet at Nuremburg, his instructions, iii. 372. opposes the assembling a general council, 373.

Chièvres, William de Croy, lord of, appointed by Maximilian to superintend the education of his grandson Charles, iii. 194. Adrian of Utrecht made preceptor under him, 195. his direction of the studies of Charles, 195, 196. his avarice corrupts the Flemish court of Charles, 209. negotiates a peace with France, 211. endeavours to prevent an interview between Charles and Ximenes, 212. attends Charles to Spain, 213. his ascendancy over Charles, 216. his extortions, 217. his death, and the supposed causes of it, 300, 301.

Chivalry, the origin of, iii. 63. its beneficial effects on human manners, 64. the enthusiasm of, distinguished from its salutary consequences, ibid.
Christianity, corrupted when first brought into Europe, iii. 67. its influence in freeing mankind from the bondage of the feudal policy, v. 248.
Christians, primitive, why averse to the principles of toleration, v. 65.
Circles of Germany, the occasion of their being formed, iii. 161.
Cities, the ancient states of, under the feudal policy, iii. 28. the freedom of, where first established, ibid. charters of community, why granted in France by Louis-le-gros, 29. obtain the like all over Europe, 30. acquire political consideration, ibid.
Clariza, slave to Willa, widow of duke Hugo, extract from the charter of manumission granted to her, v. 249.
Clement the seventh, pope, his election, iii. 363. his character, ibid. grants cardinal Wolsey a legatine commission in England for life, 364. refuses to accede to the league against Francis, 367. labours to accommodate the differences between the contending parties, ibid. his proceedings with regard to the reformers, 376. concludes a treaty of neutrality with Francis, 387. enters into a separate treaty with Charles after the battle of Pavia, and the consequences of it, 398. joins in an alliance with Francis Sforza and the Venetians against the emperor, 427. absolves Francis from his oath to observe the treaty of Madrid, 428. cardinal Colonna seizes Rome, and invests him in the castle of St. Angelo, 434. is forced to an accommodation with the imperialists, ibid. his revenge against the Colonna family, 437. invades Naples, ibid. his territories invaded by Bourbon, and his perplexity on the occasion, 439. concludes a treaty with Lannoy, viceroy of Naples, 440. his consternation on Bourbon's motions towards Rome, 441, 442. Rome taken, and himself besieged in the castle of St. Angelo, 444, 445. surrenders himself prisoner, 447. the Florentines revolt against him, iv. 3. pays Charles a ransom for his liberty, with other stipulations, 7. makes his escape from confinement, 8. writes a letter of thanks to Lautrec, ibid. is jealous of the intentions of Francis, and negotiates with Charles, 13. his motives and steps towards an accommodation, 20, 21. concludes a separate treaty with Charles, 21, 22. his interview with the emperor at Bologna, 28. crowns Charles king of Lombardy and emperor of the Romans, 30. his representatious to the emperor against calling a general council, 34. has another interview with Charles at Bologna, and the difficulties raised by him to the calling a general council, 44, 45. agrees to a league of the Italian states for the peace of Italy, 46. his interview and treaty with Francis, 49, 50. marries Catharine de' Medici to the duke of Orleans, 50. his protraction of the affair of the divorce solicited by Henry the eighth, 50, 51. reverses Cranmer's sentence of divorce, under penalty of excommunication, 51. Henry renounces his supremacy, ibid. his death, 52. reflections on his pontificate, ibid.
Clergy, the progress of their usurpations, iii. 57. their plan of jurisprudence more perfect than that of the civil courts in the middle ages, 57, 58. the great ignorance of, in the early feudal times of Europe, 258. Romish clergy, remarks on the immoral lives of, and how they contributed to the progress of the reformation, 274. the facility with which they obtained pardons, 276. their usurpations in Germany during the disputes concerning investiture, 277. their other opportunities of aggrandizing themselves there, 278. their personal immunities, 278, 279. their encroachments on the laity, 279. the dreadful effects of spiritual censures, 280. their devices to secure their usurpations, 281. the united effect of all these circumstances, 284, 285. oppose the advancement of learning in Germany, 287.
Clermont, council of, resolves on the holy war, iii. 21. See Peter the hermit, and Crusades.
Cleves, invaded and overrun by the emperor Charles the fifth, iv. 187. cruel treatment of Duren, ibid. humiliating submission of the duke, ibid.
Clotaire the first, instance of the small authority he had over his army, v. 333.
Clotharius the second, his account of the popular assemblies among the ancient Gauls, v. 335.

Clovis, the founder of the French monarchy, unable to retain a sacred vase taken by his army, from being distributed by lot among the rest of the plunder, v. 195.
Cnipperdoling, a leader of the anabaptists at Munster, an account of, iv. 55. See Anabaptists.
Cognac, an alliance formed there against Charles the fifth by the pope, the Venetians, the duke of Milan, and Francis the first, iii. 427.
Coligny, admiral, governor of Picardy, defends St. Quentin against the Spanish general Emmanuel Philibert, duke of Savoy, v. 110. his brother Dandelot defeated in an endeavour to join the garrison, 111, 112. but Dandelot enters the town, ibid. his character, 115. the town taken by assault, and himself made prisoner, ibid.
Colleges, the first establishment of, in Europe, v. 301.
Cologne, Ferdinand, king of Hungary and Bohemia, brother to the emperor Charles the fifth, elected king of the Romans by the college of electors there, iv. 40.
Cologne, Herman, count de Wied, archbishop and elector of, inclines to the reformation, and is opposed by his canons, who appeal to the emperor and pope, iv. 219. is deprived and excommunicated, 237. resigns, 273.
Colonna, cardinal Pompeo, his character and rivalship with pope Clement the seventh, iii. 433. seizes Rome, and invests the pope in the castle of St. Angelo, 434. is degraded, and the rest of the family excommunicated by the pope, 437. is prevailed on by the pope, when prisoner with the imperialists, to solicit his delivery, iv. 7.
Colonna, Prosper, the Italian general, his character, iii. 310. appointed to command the troops in the invasion of Milan, ibid. drives the French out of Milan, 313. his army, how weakened at the death of pope Leo the tenth, 314. defeats maréchal de Lautrec at Bicocca, 316. reduces Genoa, 317, 318. the bad state of his troops when the French invade Milan, 361, 362. is enabled to defend the city by the ill-conduct of Bonnivet the French commander, 362. dies, and is succeeded by Lannoy, 367.
Combat, judicial, the prohibition of, an improvement in the administration of justice, iii. 42. the foundation and universality of this mode of trial, 48. the pernicious effects of, ibid. various expedients for abolishing this practice, 49. the ancient Swedish law of, for words of reproach, v. 270. positive evidence, or points of proof, rendered ineffectual by it, 273. this mode of trial authorized by the ecclesiastics, 275. the last instances of, in the histories of France and England, 276.
Commerce, the spirit of crusading, how far favourable to, at that early period, iii. 26. the first establishment of free corporations, 28. charters of community, why granted by Louis-le-gros, 29. the like practice obtains all over Europe, 30. the salutary effects of these institutions, ibid. the low state of, during the middle ages, 70. causes contributing to its revival, ibid. promoted by the Hanseatic league, 72. is cultivated in the Netherlands, 73. is introduced into England by Edward the third, ibid. the beneficial consequences resulting from the revival of, 73, 74. the early cultivation of, in Italy, 308.
Common law, the first compilation of, made in England by lord chief justice Glanville, v. 295.
Communities. See Charters, Cities, Commerce, and Corporations.
Comnena, Anna, her character of the crusaders, v. 226.
Compass, mariner's, when invented, and its influence on the extension of commerce, iii. 71.
Composition for personal injuries, the motives for establishing, v. 257. the custom of, deduced from the practice of the ancient Germans, 277.
Compurgators, introduced as evidence in the jurisprudence of the middle ages, iii. 44.
Conchillos, an Aragonian gentleman, employed by Ferdinand of Aragon, to obtain Joanna's consent to his regency of Castile, iii. 182. thrown into a dungeon by the archduke Philip, ibid.
Condottieri, in the Italian policy, what, iii. 120.
Confession of Augsburg, drawn up by Melancthon, iv. 35.

Conrad, count of Franconia, how he obtained election to the empire, iii. 155.
Conradin, the last rightful heir to the crown of Naples of the house of Suabia, his unhappy fate, iii. 124.
Constance, the privileges of that city taken away by the emperor Charles the fifth, for disobedience to the interim, iv. 342. treaty of, between the emperor Frederic Barbarossa and the free cities of Italy, v. 231.
Constantinople, its flourishing state at the time of the crusades, iii. 23. when first taken by the Turks, 168. the crusaders how looked upon there, v. 226. the account given of this city by the Latin writers, 226, 227.
Constitutions, popular, how formed, iii. 32.
Cordova, Gonsalvo de, secures the crown of Naples to Ferdinand of Aragon, iii. 126.
Corporations, and bodies politic, the establishments of, how far favourable to the improvement of manners, iii. 27. the privileges of, how first claimed, 28. charters of community, why granted by Louis-le-gros in France, 29. the institution of, obtains all over Europe, 30. their effects, ibid.
Corsairs of Barbary, an account of the rise of, iv. 67, 68. See Algiers, Barbarossa.
Cortes of Aragon, its constitution and privileges, iii. 135. acknowledge the archduke Philip's title to the crown, iii. 177. not allowed to assemble in the name of Charles the fifth, 218. its opposition to his desires, ibid. is prevailed on by the emperor to recognise his son Philip as successor to that kingdom, iv. 181. See Spain.
Cortes of Castile, a history of, and an account of its constitution and privileges, iii. 138. the vigilance with which it guarded its privileges against the encroachments of the regal power, 139. acknowledges the archduke Philip's title to the crown, 177. is prevailed on to acknowledge Ferdinand regent, according to Isabella's will, 180. acknowledges Philip and Joanna king and queen of Castile, and their son Charles, prince of Asturias, 187. declares Charles king, and votes him a free gift, 215, 216. summoned by Charles to meet at Compostella in Galicia, 236. tumultuary proceedings thereupon, ibid. a donative voted, 237. loses all its influence by the dissolution of the holy junta, 349. its backwardness to grant supplies for the emperor's wars in Italy, 435. refuses his pressing solicitations for a supply, iv. 7. assembled at Toledo to grant supplies to the emperor, 127. the remonstrances of, ibid. the ancient constitution of, subverted by Charles, 128. See Spain.
Cortes of Valentia, prevailed on by the emperor Charles the fifth, to acknowledge his son Philip successor to that kingdom, iv. 181. See Spain.
Cortona, cardinal di, governor of Florence for the pope, expelled by the Florentines, on the pope's captivity, iv. 3.
Cosmo de' Medici. See Medici.
Cranmer, archbishop of Canterbury, annuls the marriage of Henry the eighth with Catherine of Aragon, which was refused to Henry by the pope, iv. 50. his sentence reversed by the pope, 51.
Crespy, peace of, between the emperor and Francis, iv. 208, 209.
Croy, William de, nephew to Chièvres, made archbishop of Toledo by Charles the fifth, iii. 217. dies, 348.
Crusades, the first motives of undertaking, iii. 20. the enthusiastic zeal with which they were undertaken, ibid. first promoted by Peter the hermit, 21. the success of them, 22. the consequences resulting from them, 23. their effects on manners, 23, 24. on property, 24, 25. how advantageous to the enlargement of the regal power of the European princes, 25. the commercial effects of, 26, 27. the universal frenzy for engaging in these expeditions accounted for, v. 220. the privileges granted to those who engaged in them, 221. Stephen, earl of Chartres and Blois, his account of them, 223. the expense of conducting them, how raised, 223, 224. character given of the crusaders by the Greek writers, 226.
D'Albret, John, expelled from his kingdom of Navarre, by Ferdinand of Aragon, iii. 191. invades Navarre, but is defeated by cardinal Ximenes, 207, 208.
D'Alembert, M. his observation on the order of jesuits, iv. 151, a.

Dandelot, brother to Coligni, is defeated by the duke of Saxony in an endeavour to succour St. Quentin, v. 110, 111. but enters the town with the fugitives, 111. the town taken by assault, and himself made prisoner, 115.
Dauphin of France, eldest son of Francis the first, is delivered up with the duke of Orleans to the emperor Charles the fifth, in exchange for his father, as hostages for the performance of the treaty of Madrid, iii. 416. his death imputed to poison, iv. 105. the most probable cause of it, 106.
Dauphin, late duke of Orleans, second son of Francis the first, commands an army, iv. 178. is forced to abandon the siege of Perpignan, 180. is dissatisfied at the peace of Crespy, 213. makes a secret protestation against it, ibid.
Dauphin of France, son of Henry the second, contracted to Mary the young queen of Scotland, iv. 326. is married to her, v. 129.
Debt, the first hint of attaching moveables for the recovery of, derived from the canon law, v. 293.
Debtors, how considered in the rude and simple state of society, v. 235.
Denmark, a summary view of the revolutions in, during the sixteenth century, v. 176.
Denmark, king of, joins the protestant league at Smalkalde, iv. 123.
De Retz, cardinal, writes a history of Fiesco's conspiracy while a youth, iv. 287, c.
Diana of Poitiers, mistress to Henry the second of France, assists the Guises in persuading Henry to an alliance with pope Paul the fourth against the emperor, v. 75. induces Henry to break the treaty of Vaucelles, 93. marries her granddaughter to one of Montmorency's sons, 135. joins Montmorency against the Guises, ibid.
Diets of Germany, some account of, v. 357.
Doctors, in the different faculties, dispute precedence with knights, v. 301.
Doria, Andrew, assists Lautrec in subduing Genoa, iv. 5. conquers and kills Moncada in a sea engagement before the harbour of Naples, 13. his character, 14. is disgusted with the behaviour of the French, 15. revolts to the emperor, 16. opens to Naples a communication by sea, ibid. rescues Genoa from the French, 17. restores the government of, to the citizens, 18. the respect paid to his memory, 19. attends the emperor Charles in his disastrous expedition against Algiers, 168. his partial fondness for his kinsman Giannetino, 277. his narrow escape in Lavagna's insurrection, 284. returns on Lavagna's death, and the dispersion of his party, 286. See Genoa and Lavagna.
Doria, Giannetino, his character, iv. 277. is murdered by Lavagna's conspirators, 284.
Dover, an interview there between Henry the eighth and the emperor Charles the fifth, iii. 246.
Dragut, a corsair, commands the Turkish fleet which ravages the coast of Naples, v. 15.
Du Prat, chancellor of France, his character, iii. 358, 359. commences a lawsuit against Charles, duke of Bourbon, for his estate, at the instigation of Louise the king's mother, 359.
Duelling, the custom of, how rendered general, iv. 10. its influence on manners, 11.
Duren, in Cleves, taken by the emperor Charles the fifth, the inhabitants put to the sword, and the town burnt, iv. 187.
Eccius, an adversary of Luther, holds a public disputation with him at Leipsic on the validity of the papal authority, iii. 265.
Ecclesiastical censures of the Romish church, the dreadful effects of, iii. 280.
Ecclesiastical jurisprudence, more perfect in its plan than the civil courts of the middle ages, iii. 57, 58.
Ecclesiastical reservation, in the recess of the diet of Augsburg, remarks on, v. 67, 68.
Ecclesiastics, when, and by what degrees, they claimed exemption from civil jurisdiction, v. 290. military talents cultivated and exercised by those of the middle ages, 297.

Edinburgh plundered and burnt by the earl of Hertford, iv. 204, 205.
Edward the third of England, his endeavours to introduce commerce into his kingdom, i. 73.
Edward the sixth of England, his character, v. 32.
Egmont, count of, commands the cavalry at the battle of St. Quentin, and puts Montmorency's troops to flight, v. 112. engages marshal de Termes, and defeats him by the casual arrival of an English squadron, 131.
Egypt, how and by whom added to the Ottoman empire, iii. 223.
Ehrenberg, the castle of, taken by Maurice of Saxony, iv. 395.
Eignotz, a faction in Geneva so termed, an account of, iv. 88.
Electors of Germany, the rise of their privileges, iii. 164.
Elizabeth, sister of Mary, her accession to the crown of England, v. 144. her character, ibid. is addressed by Philip of Spain and Henry of France, for marriage, 145. her prudent conduct between them, ibid. how determined against Henry, 146. her motives for rejecting Philip, ibid. returns Philip an evasive answer, 146, 147. demands restitution of Calais at the conferences at Chateau Cambresis, 147. establishes the protestant religion in England, 148. treaty between her and Henry signed at Chateau Cambresis, 148, 149.
Eloy, St. his definition or description of a good christian, v. 217, 218.
Emmanuel Philibert, duke of Savoy. See Savoy.
Emperors of Germany, an inquiry into their power, jurisdiction, and revenue, v. 351. the ancient mode of electing them, 355.
England, a summary view of the contests between, and France, iii. 79, 80. the consequences of its losing its continental possessions, 82. the power of the crown, how extended, 91, 92. See Henry the seventh. by what means that kingdom was freed from the papal supremacy, and received the doctrines of the reformation, iv. 50, 51. why so many marks of Saxon usages and language, in comparison with those of the Normans, to be found in, v. 181. when corporations began to be established in, 244. instances of the long continuance of personal servitude there, 253. inquiry into the Saxon laws for putting an end to private wars, 264. the causes of the speedy decline of private wars there, proposed to the researches of antiquaries, 266. the last instances of judicial combat recorded in the history of, 276. the territorial jurisdiction of the barons how abolished, 288. cause of the slow progress of commerce there, 314. the first commercial treaty entered into by, 315. Mary, queen of, married to prince Philip, son of the emperor Charles the fifth, contrary to the sense of the nation, 34, 35. the marriage ratified by parliament, 36. Mary establishes the Roman catholic religion, 37. is reluctantly engaged by Philip, now king of Spain, in the war against France, 108. Mary levies money by her prerogative to carry on the war, 108, 109. Calais taken by the duke of Guise, 125. Guisnes and Hames taken, ibid. death of Mary, and accession of Elizabeth, 144. the protestant religion established by Elizabeth, 148. treaty with France signed at Chateau Cambresis, 149. its interior strength, how increased by the conduct of Henry the eighth, 162. its power no longer fruitlessly wasted on the continent, 164. alteration of its conduct towards Scotland, 164, 165.
Enguien, the count de, besieges Carignan, iv. 200. desires of Francis permission to engage Guasto, 200, 201. defeats Guasto in a pitched battle, 202.
Erard de la Mark, ambassador of Charles the fifth to the diet of Frankfort, his private motives for thwarting the pretensions of Francis the first of France to the imperial crown, iii. 230. signs the capitulation of the Germanic body on behalf of Charles, 231.
Erasmus, some account of, iii. 288. preceded Luther in his censures against the Romish church, 289. concurs with him in his intentions of reformation, ibid. motives which checked him in this, 289, 290.
Escurial, palace of, built by Philip the second in memory of the battle of St. Quentin, v. 117.
Europe, the alterations in, by the conquests of the Romans, iii. 1. the improvements the nations of, received in exchange for their liberties, 2. its disadvantages under this change of circumstances, ibid. inquiry into the supposed populousness of the ancient northern nations, 3. the savage desolations ex-

ercised by the Goths, Vandals, and Huns, 7, 8. the universal change occasioned by their irruptions and conquests, 9. the first rudiments of the present policy of, to be deduced from this period, 10. origin of the feudal system, 11, 12. See Feudal System. the general barbarism introduced with this policy, 14, 15. at what time government and manners began to improve, 18, 19. the causes and events which contributed to this improvement, 19. See Crusades, Corporations, People. the miseries occasioned by private wars in, 40. methods taken to suppress them, 41. judicial combats prohibited, 42. the defects of judicial proceedings in the middle ages, 43, 44. the influence of superstition in these proceedings, 45, 46. the origin of the independent territorial jurisdictions of the barons, 52. the bad consequences of their judicial power, 53. the steps taken by princes to abolish their courts, 54, 55. an inquiry into the canon law, 56, 57. revival of the Roman law, 59. effects of the spirit of chivalry, 64. how improved by the progress of science and cultivation of literature, 65. christianity corrupted when first received in, 67. scholastic theology the first object of learning in, ibid. low state of commerce in, during the middle ages, 70. commerce revives in Italy, 71. is promoted by the Hanseatic league, 72. is cultivated in the Netherlands, 73. the effects of the progress of commerce on the polishing of manners, 73, 74. the effects of the marriage of the heiress of Burgundy with the archduke Maximilian, on the state of, 96. by what means standing forces became general in, 101, 102. consequences of the league of Cambray to, 105, 106. a view of the political constitution of the several states of, at the commencement of the sixteenth century, 111. Italy, ibid. the papacy, 112. Venice, 119. Florence, 122. Naples, 123. Milan, 126. Spain, 129. France, 147. Germany, 154. Turkey, 167. instances of the small intercourse among nations in the middle ages, 365. a short view of the state of, at the death of the emperor Maximilian, 224, 227. the contemporary monarchs of all, illustrious at the time of Charles the fifth, 249. the method of carrying on war in, how improved beyond the practice of earlier ages, 365. the sentiments of, on Charles's treatment of the pope, iv. 1. a review of the state of, during the reign of the emperor Charles the fifth, v. 153. the remarkable change in, at this period, 154. how affected by the revolt of Luther against the church of Rome, 166.

Eutemi, king of Algiers, engages Barbarossa in his service, and is murdered by him, iv. 68, 69.

Evidence, the imperfect nature of that admitted in law proceedings during the middle ages, iii. 43. rendered ineffectual by the judicial combat, v. 273.

Excommunication in the Romish church, the original institution of, and the use made of it, iii. 280.

Farnese, Alexander, his unanimous election to the papacy, iv. 52. See Paul the third.

Farnese, cardinal, accompanies the troops sent by the pope to the emperor, against the army of the protestant league, iv. 257. returns disgusted, 258. leads the troops home again by the pope's order, 274. contributes to the election of cardinal di Monte to the papacy, 347.

Farnese, Octavio, grandson of pope Paul the third, endeavours to surprise Parma, and enters into treaty with the emperor, iv. 345. is confirmed in Parma by Julius the third, 365. procures an alliance with France, 365, 366. is attacked by the imperialists, but successfully protected by the French, 367. Placentia restored to him by Philip the second of Spain, v. 119.

Farnese, Peter Lewis, natural son of pope Paul the third, obtains of his father the dutchies of Parma and Placentia, iv. 222. his character, 324. is assassinated, 325.

Feodum, the etymology of that word, v. 208.

Ferdinand, king of Aragon, unites the Spanish monarchy, by his marriage with Isabella of Castile, iii. 131. his schemes to exalt the regal power, 143. resumes former grants of land from his barons, ibid. unites to the crown the grand masterships of the three military orders, 144. why he patronised the association called the 'holy brotherhood,' against the barons, 146. how he acquired his kingdoms, 175. 176. invites his daughter Joanna, and her hus-

band Philip, archduke of Austria, to Spain, 176. becomes jealous of Philip, 177. carries on his war with France vigorously, notwithstanding Philip's treaty with Lewis, 178, 179. his queen, Isabella, dies, and leaves him regent of Castile, under restrictions, 179. resigns the kingdom of Castile, and is acknowledged regent by the Cortes, 180. his character, ibid. his maxims of government odious to the Castilians, ibid. required by Philip to resign his regency, 182. Joanna's letter of consent procured by him, intercepted by Philip, and herself confined, ibid. is deserted by the Castilian nobility, ibid. determines to exclude his daughter from the succession by marrying, 183. marries Germaine de Foix, niece to Lewis the twelfth of France, ibid. a treaty between him and Philip at Salamanca, by which the regency of Castile is jointly vested in them and Joanna, 184, 185. prevails on Henry the seventh of England to detain Philip for three months, when driven on that coast, 185. the Castilians declare against him, ibid. resigns the regency of Castile by treaty, 186. interview between him and Philip, ibid. is absent at Naples when Philip died, 189, 190. returns and gains, with the regency of Castile, the good-will of the natives by his prudent administration, 200. acquires, by dishonourable means, the kingdom of Navarre, 191. how he destroyed his constitution, 192. endeavours to diminish his grandson Charles's power by a will in favour of Ferdinand, 192, 193. alters his will in favour of Charles, 193. dies, ibid. review of his administration, 197. Ximenes appointed by his will regent of Castile until the arrival of Charles the fifth, ibid.

Ferdinand, second son of Philip, archduke of Austria, born, iii. 178. left regent of Aragon by his grandfather Ferdinand, 192. this revoked by a subsequent will, by which he obtains only a pension, 193. discontented with his disappointment, he is taken to Madrid under the eye of cardinal Ximenes, 200. sent by Charles the fifth to visit their grandfather Maximilian, 218. is elected king of Hungary and Bohemia, 448. signs a deed called the 'reverse,' 449. the emperor endeavours to get him elected king of the Romans, iv. 38. he is opposed by the protestants, 39. is crowned king of the Romans, 40. forms a confederacy against the anabaptists at Munster, 61. opposes the restoration of Ulric, duke of Wurtemburg, 65. recognises his title, and concludes a treaty with him, ibid. his kingdom of Hungary wrested from him by John Zapol Scaepus, 161. besieges the young king, Stephen, and his mother in Buda, but is defeated by the Turks, 163. his mean offers of submission to the porte, 164. which are rejected, ibid. courts the favour of the protestants, 194. opens the diet at Worms, 215. requires it to submit to the decisions of the council of Trent, 216. encroaches on the liberties of Bohemia, 319. his rigorous treatment of Prague, 320. disarms the Bohemians, ibid. obtains the sovereignty of the city of Constance, 343. invades Transylvania by invitation of Martinuzzi, 378. obtains the resignation of Transylvania from queen Isabella, 379. orders Martinuzzi to be assassinated, 382. enters into negotiation with Maurice on behalf of the emperor, 404. his motives for promoting the emperor's agreeing with Maurice, 407. Isabella and her son Stephen recover possession of Transylvania, v. 24. opens a diet at Augsburg, and excites suspicions in the protestants, 57, 58. the emperor leaves the internal administration of German affairs to him, 60. is again applied to by the emperor to resign his pretensions of succession to Philip, but refuses, ibid. endeavours, therefore, to gain the friendship of the diet, 61. again refuses the emperor's solicitations, 99. Charles resigns the imperial crown to him, ibid. assembles the college of electors at Frankfort, which acknowledges him emperor of Germany, 127. the pope refuses to acknowledge him, ibid.

Feudal government, a view of, as it existed in Spain, iii. 327, 328.

Feudal system, the origin of, deduced, iii. 11. the primary object of this policy, 12. its deficiencies for interior government, 13. tenures of land, how established under, 14. the rise of intestine discords among the barons under, ibid. the servile state of the people, ibid. the weak authority of the king, 15. its influence on the external operations of war, ibid. the general extinction of all arts and sciences effected by, 16. its operation on religion, 17. its influence on the character of the human mind, 18. at what time government and man-

ners began to be improved, 18, 19. the causes and events which contributed to this improvement, 19. See Crusades. the ancient state of cities under, 28. the frame of national councils under this policy, 32. how altered by the progress of civil liberty, 34. an inquiry into the administration of justice under, 37, 38. private war, 39. judicial combat, 45. the independent jurisdiction of the barons, 52. the distinction between freemen and vassals under, v. 199. how strangers were considered and treated under, 304.

Fiefs, under the feudal system, a history of, v. 200. when they became hereditary, 202.

Fiesco, count of Lavagna. See Lavagna.

Fiesco, Jerome, engages in his brother's conspiracy, and fails in securing Andrew Doria, iv. 284. his imprudent vanity on his brother's death, 285. shuts himself up in a fort on his estate, 287. is reduced and put to death, 293.

Fitzstephens, observations on his account of the state of London at the time of Henry the second, v. 244.

Flanders. See Netherlands.

Florence, a view of the constitution of, at the commencement of the sixteenth century, iii. 122. the influence acquired by Cosmo de' Medici in, ibid. the inhabitants of, revolt against pope Clement the seventh, on the news of his captivity, and recover their liberty, iv. 3. are reduced to subjection to Alexander de' Medici, by the emperor, 30. Alexander de' Medici, duke of, assassinated by his kinsman Lorenzo, 115. Cosmo de' Medici advanced to the sovereignty, 116. Cosmo, supported by the emperor, defeats the partisans of Lorenzo, 117, 118. Cosmo asserts his independency on the emperor, v. 12.

Fonseca, Antonio de, commander-in-chief of the forces in Spain, ordered by cardinal Adrian to besiege the insurgents in Segovia, iii. 326. is denied liberty of taking military stores, by the inhabitants of Medina del Campo, ibid. attacks and almost burns the whole town, ibid. is repulsed, ibid. his house at Valladolid burnt, 327.

France, by what means the towns in, first obtained charters of community, iii. 29. ordinances of Louis the tenth and his brother Philip in favour of civil liberty, 36. methods employed to suppress private wars, 41. St. Louis attempts to discountenance judicial combat, 49. a view of the contests between, and England, 79, 80. the consequences of its recovering its provinces from England, 81, 82. the monarchy of, how strengthened by this event, 83. the rise of standing forces in, 84. the regal prerogative strengthened by this measure, 87. the extension of the regal prerogative vigorously pursued by Louis the eleventh, 87, 88. See Louis the eleventh. the effects of the invasion of Italy by Charles the eighth, 100. See Charles the eighth. national infantry established in, 103. league of Cambray formed against the Venetians, 105. battle of Ghiarradadda, 107. an inquiry into its ancient government and laws, 147. the power of the general assemblies under the first race of kings, 148. under the second and third, ibid. the regal power confined to the king's own domains, 149. when the general assembly or states-general lost their legislative authority, 150. when the kings began to assert their legislative power, ibid. when the government of, became purely monarchical, 151. the regal power nevertheless restrained by the privileges of the nobility, 152. an inquiry into the jurisdiction of its parliaments, particularly that of Paris, 153. how the allodial property of land there was altered into feudal, v. 205. the progress of liberty in that kingdom traced, 245. the attempts to establish liberty there unsuccessful, 247. the last instance of judicial combat recorded in the history of, 276. the present government of, compared with that of ancient Gaul, 332. the states-general when first assembled, 345. the acquisitions of that kingdom, during the reign of the emperor, Charles the fifth, 139. the character of the people of, 160. the good consequences of the civil wars in that kingdom to the rest of Europe, 161, 162.

Francis the first, of France, his character influenced by the spirit of chivalry, iii. 65. is emulated by the emperor, Charles the fifth, ibid. concludes a peace with Charles the fifth, and the conditions of the treaty, 211. sends a fruitless

embassy to Charles for the restitution of Navarre to the young king, 219. aspires to the imperial crown at the death of Maximilian, 221. reasons by which he supported his pretensions, 222. remarks on the equipages of his ambassadors to the German states, 224. his pretensions adopted by the Venetians, 225. loses the election, 231. rise of the rivalship between him and Charles, 239, 240. courts the favour of cardinal Wolsey, 244. promises Wolsey his interest for the papacy, 247. has an interview with Henry the eighth of England, ibid. wrestles with Henry and throws him, ibid. e. his advantages over Charles at the commencement of hostilities between them, 296, 297. invades and reduces Navarre, in the name of Henry d'Albret, son of John, the former king, 301. the French driven out by the imprudence of l'Esparre their general, who is taken prisoner by the Spaniards, 303. retakes Mouson from the imperialists, 305. invades the Low Countries, but loses the opportunities of success by imprudence, ibid. rejects the demands of Charles at the congress at Calais, 306. a league concluded between Charles and Henry the eighth against him, 307. his imprudent appointment of the maréchal de Foix to the government of Milan, 309. de Foix attacks Reggio, but is repulsed by the governor Guicciardini, the historian, 310. the pope declares against him, ibid. his embarrassments on the invasion of Milan, ibid. his mother seizes the money appointed for the payment of the Milanese troops, 311. Milan taken, and the French driven out, 313. levies a body of Swiss, 316. who insist on giving a precipitate battle to the imperialists, which is lost, 316, 317. war declared against him by Henry the eighth, 318. his expedients to supply his treasury, ibid. the plan pursued by him to resist the incursions of the English, 320. Picardy invaded by Henry, ibid. the Venetians league with the emperor against him, 356. to which pope Adrian accedes, ibid. his expeditious movement against the Milanese, 357. disconcerted by the duke of Bourbon's conspiracy, ibid. taxes him with betraying his cause, which Bourbon denies, 360. Bourbon escapes to Italy, and Francis returns, 360, 361. appoints the admiral Bonnivet to command against the Milanese, 361. Picardy invaded by the duke of Suffolk, who is driven back, 365, 366. repulses the invasion of Guienne and Burgundy by Charles, 366. his successful close of the campaign, ibid. his prudent care to disappoint the imperialists in their invasion of Provence, 381. assembles an army, which causes the imperialists to retire from Marseilles, ibid. determines to invade the Milanese, 282. appoints his mother Louise regent during his absence, 383. enters Milan, and takes possession of the city, 384. advised by Bonnivet to besiege Pavia, 385. his vigorous attacks on Pavia, 386. concludes a treaty of neutrality with pope Clement, 387. his imprudent invasion of Naples, 387, 388. resolves, by Bonnivet's advice, to attack Bourbon's army, advanced to the relief of Pavia, 390. is routed at the battle of Pavia, 391. is taken prisoner, 392. is sent to the castle of Pizzitchitone under the custody of don Ferdinand Alarcon, ibid. refuses the propositions made to him by Charles, 400. is carried to Spain on his desire of a personal interview with Charles, 401. is rigoronsly treated in Spain, 407. falls dangerously ill, 408. is visited by Charles, ibid. resolves to resign his kingdom, 411. is delivered from this captivity by the treaty of Madrid, 412. his secret protestations against the validity of this treaty, 414. marries the queen of Portugal, ibid. recovers his liberty, and the dauphin and the duke of Orleans delivered up hostages to Charles for the performance of the treaty of Madrid, 416. writes a letter of acknowledgment to Henry the eighth of England, 426. his reply to the imperial ambassadors, ibid. enters into a league with the pope, the Venetians, and Sforza, against Charles, 427. is absolved from his oath to observe the treaty of Madrid, 428. his behaviour to the emperor's second embassy, 429, 430. is dispirited by his former ill success, 431. enters into a treaty with Henry the eighth of England against the emperor, iv. 2. successes of his general, Lautrec, in Italy, 5. his reply to the emperor's overtures, 8, 9. declares war against him, and challenges him to single combat, 10. treats Andrew Doria ill, who revolts from him to the emperor, 14. his army, under Saluces, driven out of Italy, 16, 17. his troops in Milan routed, 19. his endeavours towards an accommodation, 20. terms of the peace at Cam-

bray, concluded by the mediation of his mother Louise and Margaret of Austria, 22. remarks on the sacrifices made by him in this treaty, and on his conduct of the war, 23. leagues secretly with the protestant princes, 41. his measures to elude the treaty of Cambray, 47, 48. his negotiations with the pope, 48. his interview and treaty with the pope, 49. gives the duke of Orleans in marriage to Catharine de' Medici, 49, 50. negotiates a treaty with Francis Sforza, duke of Milan, 81. his envoy Merveille executed at Milan for murder, 82. is disappointed in his endeavours to negotiate alliances against the emperor, 83. invites Melancthon to Paris, ibid. evidences his zeal for the Romish religion, 84. causes of his quarrel with the duke of Savoy, 86. seizes the duke's territories, ibid. his pretensions to the dutchy of Milan, on the death of Francis Sforza, 91. the emperor's invective against him before the pope in council, 93. is invaded by Charles, 97. his prudent plan of defence, 99. joins the army under Montmorency, 103. death of the dauphin, 105. obtains a decree of the parliament of Paris against the emperor, 107. invades the Low Countries, 108. a suspension of arms in Flanders, and how negotiated, ibid. a truce in Piedmont, 109. motives to these truces, ibid. concludes an alliance with Solyman the magnificent, 110. negotiations for a peace with the emperor, 112. concludes a truce for ten years at Nice, 113. reflections on the war, 113, 114. his interview with Charles, 114. marries Mary of Guise to James the fifth of Scotland, 119. refuses the offers of the deputies of Ghent, 133. informs Charles of the offer made by them, 134. grants the emperor leave to pass through France to the Netherlands, 136. his reception of the emperor, 136, 137. is deceived by the emperor in respect to Milan, 140. his ambassador to the porte, Rincon, murdered by the imperial governor of the Milanese, 176. prepares to resent the injury, 177. attacks the emperor with five armies, 178, 179. his first attempts rendered abortive by the imprudence of the duke of Orleans, 180. renews his negotiations with sultan Solyman, 185. invades the Low Countries, 186. forces the emperor to raise the siege of Landrecy, 188. dismisses Barbarossa, 200. gives the count d'Enguien permission to engage Guasto, 201. relieves Paris, in danger of being surprised by the emperor, 208. agrees to a separate peace with Charles, ibid. Henry's haughty return to his overtures of peace, 212. death of the duke of Orleans, 221. peace of Campe, 249. perceives a necessity of checking the emperor's ambitious designs, 289. forms a general league against him, 290, 291. dies, 293. his life and character summarily compared with those of Charles, 293, 296. consequences of his death, 297.

Francis the second, his accession to the crown of France, and character, v. 152.

Frankfort, the diet of, assembled for the choice of an emperor at the death of Maximilian, iii. 227. names and views of the electors, 227, 228. the empire offered to Frederic of Saxony, 228. who rejects it, with his reason, 228, 229. chooses Charles the fifth emperor, 231. his confirmation of the Germanic privileges required and agreed to, ibid. city of Frankfort embraces the reformed religion, 371. the college of electors assembled there by Ferdinand, who is acknowledged emperor of Germany, v. 127.

Frederic, duke of Saxony, assembles with the other electors at the diet of Frankfort, to choose an emperor, iii. 228. the empire offered to him, ibid. rejects it, and votes for Charles the fifth, 228, 229. refuses the presents of the Spanish ambassadors, 229. this disinterested behaviour confirmed by the testimony of historians, 229, z. chooses Martin Luther philosophical professor at his university of Wittemburg, 254. encourages Luther in his opposition to indulgences, 256. protects him against Cajetan, 262. causes Luther to be seized at his return from the diet at Worms, and conceals him at Wartburg, 294. dies, 424.

Frederic Barbarossa, emperor, the free cities of Italy unite against him, v. 231. treaty of Constance with them, ibid. was the first who granted privileges to the cities in Germany, 241.

Fredum, in the ancient German usages explained, v. 278.

Freemen, how distinguished from vassals, under the feudal policy, v. 199. why often induced to surrender their freedom, and become slaves, 213.

Fregoso, the French ambassador to Venice, murdered by the marquis del Guasto, the imperial governor of the Milanese, iv. 176.
Fronsperg, George, a German nobleman, some account of, he joins the army of Charles the fifth, iii. 435.
Fulcherius Carnotensis, his character of the city of Constantinople, v. 226.
Gaul, how allodial property of land was changed into feudal there, v. 205. the government of, compared with that of modern France, 332. the small authority the kings of, enjoyed over their armies, illustrated in an anecdote of Clotaire the first, 333. account of the popular assemblies of, 335. the Salic laws, how enacted, ibid. were not subject to taxation, 337. See France.
General of the jesuits, an inquiry into his office and despotic authority, iv. 144, 145.
Geneva, an account of its revolt against the duke of Savoy, iv. 88, 90.
Genoa, reduced by Lautrec, the French general, iv. 5. the French endeavour to prejudice its trade in favour of Savona, 15. is rescued from the French by Andrew Doria, 17. the government of, settled by the disinterestedness of Doria, 18. the honour paid to Doria's memory, 19. is visited by the emperor, 28. a scheme formed to overturn the constitution of, by Fiesco, count of Lavagna, 276. he assembles his adherents, 280. the conspirators sally forth from Lavagna's palace, 283. deputies sent to know Lavagna's terms, 285. Lavagna drowned, ibid. the insurrection ruined by the imprudence of his brother Jerome Fiesco, ibid. the conspirators disperse, 286. Jerome reduced and put to death, 293.
Geoffrey de Villehardouin, his account of the magnificence of Constantinople at the time when taken by the crusaders, v. 227.
Germanada, an association in Valencia, so termed, on what occasion formed, iii. 349. refuse to lay down their arms, 350. their resentment levelled at the nobility, who raise an army against them, ibid. defeat the nobles in several actions, 351. but are routed and dispersed by them, ibid.
Germans, ancient, an account of their usages and way of life, v. 189. their method of engaging in war, ibid. a comparison between them and the North American Indians, 193. why they had no cities, 240. the practice of compounding for personal injuries by fines deduced from their usages, 277.
Germany, little interested in foreign concerns at the beginning of the fifteenth century, iii. 80. national infantry established in, 103. state of, under Charlemagne and his descendants, 154. Conrad, count of Franconia, chosen emperor, 155. his successors in the imperial dignity, ibid. how the nobility of, acquired independent sovereign authority, 156. the fatal effects of aggrandizing the clergy in, 157. the contests between the emperor Henry the fourth and pope Gregory the seventh, 158. rise of the factions of guelfs and ghibelines, ibid. decline of the imperial authority, 159. the house of Austria, by whom founded, ibid. a total change in the political constitution of the empire, ibid. the state of anarchy in which it continued to the time of Maximilian, the immediate predecessor of Charles the fifth, 160, 161. divided into circles, 161. the imperial chamber instituted, ibid. the aulic council reformed, ibid. a view of its political constitution at the commencement of the ensuing history, ibid. its defects pointed out, 162. the imperial dignity and power compared, 163. election of the emperors, 164. the repugnant forms of civil policy in the several states of, 165. the opposition between the secular and ecclesiastical members of, 165, 166. the united body hence incapable of acting with vigour, 167. state of, at the death of the emperor Maximilian, 220, 221. Charles the fifth of Spain, and Francis the first of France, form pretensions to the imperial crown, 221. their respective reasons offered in favour of their claims, 222, 223. views and interests of the other European states in relation to the competitors, 224. Henry the eighth of England advances a claim, 225. but is discouraged from prosecuting it, 226. how the papacy was likely to be affected in the choice of an emperor, ibid. advice of pope Leo the tenth to the German princes, ibid. opening of the diet at Frankfort, 227. in whom the election of an emperor is vested, 227, 228. views of the electors, 228. the empire offered to Frederic of Saxony, ibid. who rejects it, and his reasons, ibid. Charles the fifth chosen, 231. the ca-

pitulation of the Germanic privileges, confirmed by him, ibid. Charles sets out for Germany, 238. Charles crowned at Aix-la-Chapelle, 248. commencement of the reformation there, by Martin Luther, 249. treatment of the bull of excommunication published against Luther, 267. the usurpations of the clergy there, during the disputes concerning investitures, 277. the clergy of, mostly foreigners, 281. the benefices of, nominated by the pope, 282. the expedient of the emperors for restraining this power of the pope, ineffectual, 283. the great progress of Luther's doctrines in, 371. grievances of the peasants, 417. insurrection in Suabia, 418. the memorial of their grievances, 419. the insurrection quelled, ibid. another insurrection in Thuringia, 420. how the house of Austria became so formidable in Germany, 449. proceedings relating to the reformation there, ibid. great progress of the reformation there, iv. 31. Ferdinand king of Hungary and Bohemia, brother to Charles the fifth, elected king of the Romans, 40. the protestant religion established in Saxony, 125. the protestant religion established in the palatinate, 223. the league of Smalkalde raise an army against the emperor, 250. are put under the ban of the empire, 253. the protestant army dispersed, 268. the interim enforced by the emperor, 338, 339. Maurice of Saxony raises an army and declares in favour of the protestants, 390. Maurice favoured even by the catholic princes, and why, 405. treaty of Passau, between the emperor and Maurice of Saxony, 411. truce between the emperor and Henry of France, v. 88. Charles resigns the imperial crown to his brother Ferdinand, 99. when cities first began to be built in, 241. when the cities of, first acquired municipal privileges, 242. the artisans of, when enfranchised, ibid. 'Immediate' cities in the German jurisprudence, what, ibid. the great calamities occasioned there by private wars, ibid. origin of the league of the Rhine, 267. when private wars were finally abolished there, 268. inquiry into the power, jurisdiction, and revenue of its emperors, 351. the ancient mode of electing the emperors, 355. account of the diets, 357.

Ghent, an insurrection there, iv. 130. the pretensions of the citizens, ibid. form a confederacy against the queen-dowager of Hungary, their governess, 131. their deputies to the emperor, how treated by him, ibid. offer to submit to France, 132. is reduced by Charles, 138, 139.

Ghibeline faction in Italy, a view of, iii. 433.

Ghibelines. See Guelfs.

Ghiarradadda, the battle of, fatal to the Venetians, iii. 107.

Giron, don Pedro de, appointed to the command of the army of the holy junta, iii. 338. resigns his commission, and Padilla replaced, 340.

Glanville, lord chief justice, the first who compiled a body of common law, in all Europe, v. 295.

Goletta in Africa, taken by the emperor Charles the fifth, iv. 75.

Gonzaga, the imperial governor of Milan, procures cardinal Farnese to be assassinated, and takes possession of Placentia for the emperor, iv. 324, 325. prepares to seize Parma, 365. is repulsed by the French, 367.

Goths, Vandals, and Huns overrun the Roman empire, and precipitate its downfall, iii. 3. the state of the countries from whence they issued, 4. the motives of the first excursions, ibid. how they came to settle in the countries they conquered, 5. a comparison drawn between them and the Romans, at the period of their eruptions, 7. compared with the native Americans, 8. the desolations they occasioned in Europe, ibid. the universal change made by them in the state of Europe, 9. the principles on which they made their settlements, 10, 11. origin of the feudal system, 11. See Feudal System. an inquiry into the administration of justice among, 37, 38. their private wars, 39. destroy the monuments of the Roman arts, 66. their contempt of the Romans, and hatred of their arts, v. 179. their aversion to literature, 180. no authentic account of their origin or ancient history existing, ibid.

Gouffier, sent by Francis the first, king of France, to negotiate a peace with Charles the fifth, iii. 211.

Government, how limited by the feudal policy, iii. 13, 14. the effects of the crusades on, 25. how affected by the enfranchisement of cities, 31. legislative assemblies how formed, 33. private wars destructive to the authority of, 40.

methods employed to abolish this hostile mode of redressing injuries, 41. how affected by the supreme independent jurisdictions of the barons, 52. the steps towards abolishing them, 54. the origin and growth of royal courts of justice, 56. how influenced by the revival of science and literature, 69. a view of, at the beginning of the fifteenth century, 75. the power of monarchs then very limited, 76. their revenues small, 77. their armies unfit for conquest, ibid. the princes hence incapable of extensive plans of operation, 78. the kingdoms very little connected with each other, 79. how the efforts of, from this period, became more powerful and extensive, 81. the consequences of England losing its provinces in France, 81, 82. the schemes of Louis the eleventh of France to extend the regal power, 87. See Louis the eleventh. the power of the English crown enlarged, 92. See Henry the seventh. as also that of Spain, 93. how the use of standing armies became general, 101. a view of the political constitution of the several states of Europe at the commencement of the sixteenth century, 110. in what respects the charters of communities granted by the kings of France tended to introduce a regular form of, v. 233.

Granvelle, cardinal, his artifice to prevail on the count de Sancerre to surrender St. Disier to the emperor, iv. 206. endeavours to lull the protestants into security with regard to the emperor's conduct towards them, 229. is commissioned by Philip to address the assembly at the emperor's resignation of his hereditary dominions, 85, 86.

Gravelines, an interview there between the emperor Charles the fifth and Henry the eighth of England, iii. 248.

Granada, archbishop of, president of the council of Castile, his imprudent advice to cardinal Adrian relating to the insurrection in Segovia, iii. 325.

Greece, the breeding of silk worms, when introduced there, v. 309.

Greek emperors, their magnificence at Constantinople, v. 225.

Gregory of Tours, remarks on the state of Europe during the period of which he wrote the history, iii. 18.

Gregory the great, pope, his reason for granting liberty to his slaves, v. 248.

Gregory the seventh, pope, the foundation of his contests with Henry the fourth, emperor of Germany, iii. 158. the mean submission he extorted from Henry, ibid. his own account of this affair, v. 351.

Gropper, canon of Cologne, is appointed a manager of the protestant and catholic conferences before the diet at Ratisbon, iv. 157. writes a treatise to compose the differences between them, 157, 158. the sentiments of both parties on this work, 158, 159.

Guasto, the marquis del, appointed governor of Milan by the emperor, iv. 104. procures Rincon, the French ambassador to the porte, to be murdered on his journey thither, 176. defends Carignan against the French, 200. defeated by D'Enguien in a pitched battle, 202.

Guelfs and Ghibelines, rise of those factions in Germany, iii. 158.

Guicciardini, the historian, instance of his superstitious reverence for pope Clement the seventh, iii. 119, s. his account of the publication of indulgences contradicted, 257, *. defends Reggio against the French, 310. repulses an attack upon Parma by the French, 314. his sentiments of the pope's treaty with Lannoy, viceroy of Naples, 440.

Guise, Francis of Lorrain, duke of, is made governor of Metz by Henry the second of France, v. 4, 5. his character, 5. prepares to defend it against the emperor, ibid. his brother d'Aumale taken prisoner by the imperialists, 8. the emperor raises the siege, 11. his humane treatment of the distressed and sick Germans left behind, ibid. persuades Henry to an alliance with pope Paul the fourth, 75. marches with troops into Italy, 103. is unable to effect any thing, 105, 106. is recalled from Italy after the defeat of St. Quentin, 117. his reception in France, 122. takes the field against Philip, 123. invests and takes Calais from the English, 123, 125. takes also Guisnes and Hames, 125. takes Thionville in Luxembourg, 130, 131.

Guise, Mary of, married to James the fifth of Scotland, iv. 119. frustrates the intended marriage between her daughter Mary and prince Edward of England, 199.

Gurk, cardinal de, why he favoured the election of Charles the fifth to the im-

perial crown, iii. 230. signs the capitulation of the Germanic body on behalf of Charles, 231.
Guntherus, a monk, his character of Constantinople at the time when taken by the crusaders, v. 227.
Gusman, chancellor to the emperor Ferdinand, is sent to pope Paul the fourth to notify the election, who refuses to see him, v. 127.
Hamburg, city of, embraces the reformed religion, iii. 217.
Hanseatic league, when formed, and its influence on the extension of commerce, iii. 72.
Haro, the conde de, appointed to command the army of the Castilian nobles against the holy junta, iii. 339. attacks Tordesillas, and gets possession of queen Joanna, ibid. routs the army of the junta, and takes Padilla prisoner who is executed, 344, 345.
Hascen agà, deputy-governor of Algiers, his piracies against the christian states, iv. 166. is besieged in Algiers by the emperor Charles the fifth, 168. makes a successful sally, 169. the emperor forced by bad weather to return back again, 171.
Hayradin, a potter's son of Lesbos, commences pirate, iv. 68. See Barbarossa.
Heathens, ancient, why the principles of mutual toleration were generally admitted among them, v. 64.
Heldo, vicechancellor to Charles the fifth, attends the pope's nuncio to Smalkalde, iv. 121. forms a catholic league in opposition to the protestant one, 123.
Henry the second, king of France, his motives for declining an alliance with pope Paul the third against the emperor, iv. 326. procures for Scotland a peace with England, 366. the young queen Mary contracted to the dauphin, and sent to France for education, ibid. enters into an alliance with Octavio Farnese, duke of Parma, 367. protests against the council of Trent, 368. makes alliance with Maurice elector of Saxony, 383, 384. seconds the operations of Maurice, 391. his army marches and seizes Metz, 394. attempts to surprise Strasburg, 401. is strongly solicited to spare it, ibid. returns, 402. the emperor prepares for war against him, v. 3. instigates the Turks to invade Naples, 15. Terouenne taken and demolished by Charles, 21. Hesden taken, ibid. leads an army into the Low Countries against Charles, 22. endeavours to obstruct the marriage of Mary of England with Philip of Spain, 39. the progress of his arms against the emperor, 40. engages Charles, 41. retires, 42. Cosmo de' Medici, duke of Florence, makes war against him, 43. appoints Peter Strozzi commander of his army in Italy, 45. Strozzi defeated, 46. Siena taken, 48, 49. pope Paul the fourth makes overtures to an alliance with him against the emperor, 74. Montmorency's arguments against this alliance, 74, 75. is persuaded by the Guises to accept it, 75. sends the cardinal of Lorrain with powers to conclude it, 75, 76. the pope signs the treaty, 78. a truce for five years concluded with the emperor, 88. is exhorted by cardinal Caraffa to break the truce, 91, 92. is absolved from his oath, and concludes a new treaty with the pope, 93. sends the duke of Guise into Italy, 103. the constable Montmorency defeated and taken prisoner at St. Quentin, 112. Henry prepares for the defence of Paris, 113. St. Quentin taken by assault, 115. collects his troops, and negotiates for assistance, 115, 116. his kind reception of the duke of Guise, 122. Calais taken by Guise, 125. empowers Montmorency to negotiate a peace with Philip, 135. honours him highly on his return to France, 136. writes to queen Elizabeth with proposals of marriage, 144. how he failed in his suit, 145. his daughter married to Philip, and his sister to the duke of Savoy, 150. terms of the treaty of Chateau Cambresis, 150, 151. the marriage of his sister and daughter celebrated with great pomp, 152. his death, ibid.
Henry the seventh of England detains the archduke Philip and his dutchess when driven on his coast, three months, at the instigation of Ferdinand, iii. 185.
Henry the eighth, of England, sends an ambassador to Germany to propose his claims to the imperial crown, iii. 225. is discouraged from his pretensions, and takes no part with the other competitors, 226. his personal character and

political influence in Europe, 242, 243. entirely guided by cardinal Wolsey, 243, 244. receives a visit from the emperor Charles the fifth, 246. goes over to France to visit Francis, 247. wrestles with Francis, and is thrown by him, ibid. e. has another interview with Charles at Gravelines, 248. Charles offers to submit his differences with Francis to his arbitration, ibid. publishes a treatise on the seven sacraments, against Martin Luther, 295. obtains of the pope the title of *Defender of the Faith*, 296. takes part with Charles against Francis, 297. sends Wolsey to negotiate an accommodation between the emperor and Francis, 305, 307. concludes a league with Charles against Francis, 307. his avowed reasons for this treaty, ibid. his private motives, 308. declares war against Francis, 318. is visited by Charles, 319. makes descents upon the coasts of France, ibid. advances with an army into Picardy, 320. obliged to retire by the duke de Vendome, ibid. enters into a treaty with the emperor and Charles duke of Bourbon, 359. how he raised supplies for his wars beyond the grants of his parliament, 365. sends the duke of Suffolk to invade Picardy, who penetrates almost to Paris, but is driven back, ibid. engages to assist Charles in an invasion of Provence, 380. causes of his not supporting the imperialists, 382. effects of the battle of Pavia, and captivity of Francis, on him, 395. particulars of his embassy to Charles, 396, 397. concludes a defensive alliance with France, 402. is declared protector of the league of Cognac against the emperor, 428. his motives for assisting the pope against the emperor, iv. 1. enters into a league with Francis, and renounces the English claim to the crown of France, 3. declares war against the emperor, 9, 10. concludes a truce with the governess of the Low Countries, 14. projects his divorce from Catharine of Aragon, 25. motives which withheld the pope from granting it, 26. acquiesces in the peace of Cambray, 27. sends a supply of money to the protestant league in Germany, 41. procures his marriage to be annulled by Cranmer, archbishop of Canterbury, 50. the divorce reversed by the pope under penalty of excommunication, 51. renounces the papal supremacy, ibid. refuses to acknowledge any council called by the pope, 66. opposes James the fifth of Scotland marrying Mary of Guise, 119. his disgusts with Francis, and intercourse with the emperor, 120. concludes a league with Charles, 183. makes war with Scotland, ibid. particulars of his treaty with Charles, 185. invades France, and invests Boulogne, 204. refuses the emperor's plan of operations, 208. is deserted by the emperor, 212. takes Boulogne, ibid. his haughty proposals to Francis, ibid. peace of Campe, 249. is succeeded by his son Edward the sixth, 291. a review of his policy, v. 162, 163.

Henry the fourth, of Castile, solemnly tried and deposed by an assembly of Castilian nobles, iii. 134.

Henry the fourth, emperor of Germany, the humiliating state to which he was reduced by pope Gregory the seventh, iii. 158.

Henry the seventh, of England, his situation at his accession to the crown, iii. 92. enables his barons to break their entails and sell their estates, ibid. prohibits his barons keeping retainers, ibid. encourages agriculture and commerce, ibid.

Hertford, earl of, plunders and burns Edinburgh, iv. 204. joins Henry after, in his invasion of France, 205.

Herebannum, the nature of this fine under the feudal policy, explained, v. 199.

Hermandad, Santa, account of that institution, v. 331.

Hesse, the landgrave of, procures the restoration of his kinsman, Ulric duke of Wurtemburg, iv. 63. his views compared with those of the elector of Saxony, 228. the emperor's deceitful professions to him, 235. quiets the apprehensions of the protestant league with regard to the emperor, 236. is appointed joint commander of the army of the league with the elector of Saxony, 256. their characters compared, ibid. urges an attack of the emperor, but is opposed by the elector, 259, 260. his letter to Maurice duke of Saxony, 266, 267. the army of the league disperse, 268. is reduced to accept harsh terms from Charles, 310. his humiliating reception by the emperor, 313. is detained in confinement, 314. his offers of submission slighted by the emperor, 337, 338. is carried by the emperor with him into the Netherlands, 340. renews

his endeavours for liberty, 359. Charles releases arbitrarily the elector of Brandenburg, and Maurice, from their engagements to him, ibid. obtains his liberty by the treaty of Passau, 411. is arrested by the queen of Hungary, but freed by the emperor, v. 2. the effects of his confinement on him, ibid.

Heuterus, his account of Lewis the twelfth shown to contradict the relations given by Bellay and other French historians of the education of Charles the fifth, iii. 194, g.

History, the most calamitous period of, pointed out, iii. 9.

Holy brotherhood, an association in Spain under that name, on what occasion formed, iii. 146.

Holy junta. See Junta.

Holy land, the original inducements of the christians to rescue it from the hands of the infidels, iii. 20. See Crusades and Peter the hermit.

Holy league, against the emperor Charles the fifth, formed at Cognac, under the protection of Henry the eighth of England, iii. 427, 428.

Honour, points of the ancient Swedish law for determining, v. 270.

Horuc, a potter's son of Lesbos, commences pirate with his brother Hayradin, iv. 68. See Barbarossa.

Hospitality, enforced by statutes during the middle ages, v. 304.

Hungary, is invaded by Solyman the magnificent, and its king Lewis the second, killed, iii. 447, 448. his successes, and the number of prisoners carried away, 448. the archduke Ferdinand elected king of, together with Bohemia, ibid. John Zepol Scæpius wrests it from Ferdinand, iv. 161. Stephen succeeds on the death of his father John, 162. is treacherously seized by Solyman, 164. See Isabella and Martinuzzi.

Huns, instance of their enthusiastic passion for war, v. 181. some account of their policy and manners, 182, 188. See Goths.

Imperial chamber of Germany instituted, iii. 161. the occasion of its institution, ibid.

Indians, North American, a comparison drawn between them and the ancient Germans, v. 193.

Indulgences, in the Romish church, the doctrine of, explained, iii. 251. by whom first invented, ibid. Martin Luther preaches against them, 254, 255. writes against them to Albert, elector of Mentz, ibid. a bull issued in favour of, 264. the sale of, opposed in Switzerland by Zuinglius, 266.

Industry, the spirit of, how excited by the enfranchisements of cities, iii. 32.

Infantado, duke of, his haughty resentment of a casual blow on his horse, iv. 129. is protected by the constable of Castile, ibid.

Infantry, the advantages of, beyond cavalry, taught to the rest of Europe by the Swiss, iii. 102, 103. national bodies of, established in Germany, 103. in France and Spain, 104.

Inheritance, and right of representation, between orphan grandsons and their uncles, how decided in the tenth century, v. 271.

Innocent, a young domestic of cardinal di Monte, obtains his cardinal's hat on his election to the papacy, iv. 348.

Interest of money, the necessity of admitting, in a commercial view, v. 310. preposterously condemned by the churchmen of the middle ages, ibid. the cause hence, of the exorbitant exactions of the Lombard bankers, 311.

Interim, a system of theology so called, prepared by order of the emperor Charles the fifth for the use of Germany, iii. 330, 331. is disapproved of by both protestants and papists, 334. compliance with, enforced, 338, 339.

Investitures, usurpations of the Romish clergy in Germany during the disputes between the emperors and popes, concerning, iii. 277.

Isabella, daughter of John the second, of Castile, and wife of Ferdinand, king of Aragon, her history, iii. 175, 176. her concern at the archduke Philip's treatment of her daughter Joanna, 177. her death and character, 179. appoints Ferdinand regent of Castile, under restrictions, 179, 180.

Isabella, daughter to Sigismund, king of Poland, married to John, king of Hungary, iv. 161. her character, 162. is treacherously carried with her infant son into Transylvania by sultan Solyman, 164. the government of this province

and the education of her son committed to her jointly with Martinuzzi, 377. is jealous of Martinuzzi's influence, and courts the Turks, 378. is prevailed on to resign Transylvania to Ferdinand, 379. retires to Silesia, 380. recovers possession of Transylvania, v. 24.
Isabella of Portugal, married to the emperor Charles the fifth, iii. 416.
Italy, when the cities of, began to form themselves into bodies politic, iii. 28. commerce first improved there, and the reasons of it, 71. the revolutions in Europe occasioned by the invasion of, by Charles the eighth of France, 97. the state of, at the time of this invasion, 97, 98. the rapid success of Charles, 99. a combination of the states of, drives Charles out of, and gives birth to the balance of power in Europe, 100. the political situation of, at the commencement of the sixteenth century, 111, 112. the papacy, 112. Venice, 119. Florence, 122. Naples, 123. Milan, 126. consequences of the league between pope Leo the tenth, and the emperor Charles the fifth, to, iii. 308. the characters of the Italians, Spaniards, and French contrasted, ibid. state of, at the accession of Clement the seventh, to the papacy, 363. views of the Italian states with respect to the emperor and Francis on the expulsion of the French from Genoa and the Milanese, 379. their apprehensions on the battle of Pavia and captivity of Francis, 397. the principal states join in the holy league against the emperor, 427. are disgusted at the tardiness of Francis, 432. a view of the Ghibeline faction, 433. sentiments of the states of Italy on the peace of Cambray, v. 24. is visited by the emperor Charles the fifth, 27. the motives of his moderation towards the states of, 28, 29. a league among the states of, formed by Charles, 47. Placentia granted to Octavio Farnese by Philip the second of Spain, 119. the investiture of Siena given by Philip to Cosmo de' Medici, 121. the consequence of these grants, 122. evidences of the desolation made there by the northern invaders of the Roman empire, 187. how the cities of, obtained their municipal privileges, 228. state of, under Frederic the first, 229. treaty of Constance between the free cities of, and the emperor Frederic Barbarossa, 231.
James the fifth of Scotland levies troops to assist Francis in Provence, but his intention frustrated, iv. 118. his negotiations for marriage with Francis's daughter, 119. marries Mary of Guise, ibid. dies, and leaves Mary his infant daughter to succeed him, 184. See Mary.
Janizaries, origin and formidable nature of those troops, iii. 170.
Jesuits, the order of, by whom founded, iii. 302. character of that order, ibid. character of Ignatio Loyola their founder, iv. 142. the order confirmed by the pope, 143. an examination into the constitution of the order, ibid. office and power of their general, 144, 145. the rapid progress of the order, 147. engage in trade, and establish an empire in South America, 149. bad tendency of the order, ibid. are responsible for most of the pernicious effects of popery since their institution, 151. advantages resulting from their institution, ibid. civilize the natives of Paraguay, 152. their precautions for the independency of their empire there, 153, 154. how the particulars of their government and institution came to be disclosed, 155. summary of their character, 156.
Joanna, daughter of Ferdinand, and mother of Charles the fifth, visits Spain with her husband Philip, archduke of Austria, iii. 176. is slighted by her husband, 177. her character, ibid. is abruptly left in Spain, by her husband, 178. sinks into melancholy on the occasion, and is delivered of her second son Ferdinand, ibid. her letter of consent to her father's regency of Castile intercepted, and herself confined, 182. made joint regent of Castile with Ferdinand and Philip, by the treaty of Salamanca, 185. sets out for Spain with Philip, is driven on the coast of England, and detained three months by Henry the seventh, ibid. acknowledged queen by the cortes, 187. her tenderness to her husband in his sickness, and extraordinary attachment to his body when dead, 187, 188. is incapable of government, 188. her son Charles assumes the crown, 200. the cortes acknowledge her son king, with a reservation in her favour, 215. her reception of Padilla, the chief of the Spanish malecontents, 330. the holy junta removed to Tordesillas, the place of her residence, ibid. relapses into her former melancholy, ibid. the proceedings of

the holy junta carried on in her name, 331. is seized by the conde de Haro, 339. dies, after near fifty years' confinement, v. 82.
John Zapol Scæpius, by the assistance of sultan Solyman, establishes himself in the kingdom of Hungary, iv. 161. leaves the kingdom to his son Stephen, 162. See Hungary, Isabella, and Martinuzzi.
Judgment of God, modes of acquittal by, in the law proceedings during the middle ages, v. 268.
Judicium Crucis, method of trial by, v. 268.
Julius the second, pope, forms a confederacy against the Venetians at Cambray, iii. 106. seizes part of the Venetian territories, 107. the confederacy dissolved, ibid. turns his schemes against France, 108. observations on the pontificate of, 273.
Julius the third, pope, his character, iv. 347. bestows his cardinal's hat infamously, 348. is averse to the calling a council, 349. summons one at Trent, 350. asserts his supreme authority peremptorily in the bull for it, 358. repents confirming Octavio Farnese in Parma, 365. requires Octavio to relinquish his alliance with France, 367. the manner of his death, v. 59.
Junta, holy, a view of the confederacy in Spain, so termed, iii. 328, 329. the authority of Adrian disclaimed by, 329. removed to Tordesillas, where queen Joanna resided, 330. their proceedings carried on in the name of Joanna, 331, receive letters from Charles to lay down their arms, with promises of pardon, 332. remonstrance of grievances drawn up by, 332, 333. the particulars of this remonstrance, 333, 335. remarks on the spirit of it, 335. are intimidated from presenting it to Charles, 337. propose to deprive Charles of his royalty during the life of Joanna, ibid. take the field, 338. character of their army, ibid. the queen seized by the conde de Haro, 339. how they obtained money to support their army, 340, 341. lose time in negotiating with the nobles, 341. propose to make their peace with Charles at the expense of the nobles, 343. their irresolute conduct, ibid. their army defeated by Haro, and Padilla taken prisoner, 344. Padilla executed, 345. his letters to his wife, and the city of Toledo, 345, t. the ruin of the confederacy, 346.
Jurisprudence, ecclesiastical, more perfect in its plan than the civil courts of the middle ages, iii. 57, 58. See Law.
Justice, an inquiry into the administration of, under the feudal policy, iii. 37, 38. the steps towards the improvement of, as civil liberty advanced, 38. redress chiefly pursued by private wars, 39. methods taken to suppress private wars, 41. judicial combats prohibited, 42. the defects of judicial proceedings in the middle ages, 43, 44. compurgators, the nature of that kind of evidence, 44. methods of trial by ordeal, or acquittal by judgment of God, 45. origin of the supreme independent jurisdictions of the feudal barons, 52. the extent and bad effects of their privileges, 53. the steps taken by monarchs to reduce the barons' courts, 54, 55. the growth of royal courts of justice, 56. inquiry into the canon law, 56, 57. how improved by the revival of the Roman law, 59. when the administration of, became a distinct profession, 62.
Justiza, or supreme judge of Aragon, his office and privileges, iii. 136. an inquiry by whom this officer was elected, v. 316. who was eligible to this office, 317, 318. nature of the tribunal appointed to control his administration, 318. instance of his extensive power, 319.
King, his power, how circumscribed by the barons under the feudal system, iii. 15. by what means the crusades tended to enlarge the regal authority, 25.
Koran, its influence in checking the sultans of the Ottoman empire, iii. 169.
La Chau, a Flemish gentleman, associated by Charles the fifth, with cardinal Ximenes in the regency of Castile, iii. 207.
Land, how held at the establishment of the feudal system, iii. 12. See Feudal System.
Land, the property of, how considered by the ancient barbarous nations, v. 197. allodial possession of, explained, ibid. the proprietors of, how subjected to military service, 197, 198. allodial and beneficiary possession distinguished, 198, 199. allodial property, why generally converted into feudal, 205.
Landrecy, siege of, by the emperor Charles the fifth, iv. 188. is abandoned by him, ibid.

Lannoy mortgages the revenues of Naples to supply the exigencies of the emperor, iii. 384. Francis surrenders himself prisoner to him at the battle of Pavia, 392. his cautious disposal of him, ibid. delivers him up in pursuance of the treaty of Madrid, and receives the duke of Orleans and the dauphin as hostages in exchange, 416. is sent ambassador to Francis to require his fulfilment of the treaty of, 429. concludes a treaty with the pope, 440. marches to join the imperialists at Rome, where the troops refuse to obey him, iv. 3, 4.

Lanusa, don John de, made viceroy of Aragon, on the departure of Charles the fifth for Germany, iii. 237. composes the disturbances there, 351.

Lautrec, Odet de Foix, maréchal de, the French governor of Milan, his character, iii. 309. alienates the affection of the Milanese from the French, ibid. invests Reggio, but is repulsed by Guicciardini the historian, then governor, 310. is excommunicated by the pope, ibid. the money for paying his troops seized by Louise of Savoy, 311. is left by his Swiss troops, 312. is driven out of the Milanese territories, 313. a new body of Swiss under him insist on giving battle to the imperialists, who defeat him, 316. the Swiss leave him, 317. retires into France with the residue of his troops, ibid. delivers up the dauphin and duke of Orleans in exchange for Francis the first, as hostages for the performance of the treaty of Madrid, 416. is appointed generalissimo of the league against the emperor, iv. 5. his successes in Italy, ibid. motives which withheld him from subduing the Milanese, 6. obliges the prince of Orange to retire to Naples, 12. blockades Naples, ibid. his army wasted, and himself killed by the pestilence, 16, 17.

Lavagna, John Lewis Fiesco, count of, his character, iv. 277. meditates subverting the government of Genoa, 278. his preparations, 278, 279. his artful method of assembling his adherents, 280. his exhortation to them, 281. his interview with his wife, 282. sallies forth, 283. Andrew Doria escapes, 284. deputies sent to know his terms, 285. is drowned, ibid. his brother's vanity ruins their design, ibid. See Fiesco.

Law, when the study of it became a distinct employment, iii. 62.

Law, canon, an inquiry into, 56, 57. the maxims of, more equitable than the civil courts of the middle ages, 58. when first compiled, v. 290.

Law, Roman, how it sunk into oblivion, iii. 59. circumstances which favoured the revival of it, 60. its effects in improving the administration of justice, ibid. its rapid progress over Europe, v. 294.

Lawburrows, in the Scottish law, explained, v. 234.

Learning, the revival of, favourable to the reformation of religion, iii. 286.

Leipsic, a public disputation held there by Martin Luther and Eccius, on the validity of the papal authority, iii. 265.

Leo the tenth, pope of Rome, his character, iii. 226. his apprehensions on the election of an emperor of Germany, at the death of Maximilian, ibid. his counsel to the German princes, ibid. grants Charles the fifth a tenth of all ecclesiastical benefices in Castile, 233. lays Castile under an interdict, but takes it off at the instance of Charles, 233, 234. his conduct on the prospect of war between Charles and Francis, 241. situation of the papacy, at his accession, and his views of policy, 250, 251. his inattention to Martin Luther's controversy with the dominicans concerning indulgences, 258. is instigated against him, and summons him to Rome, 259. desires the elector of Saxony not to protect him, ibid. is prevailed on to permit Luther's doctrines to be examined in Germany, 260. cardinal Cajetan appointed to try him, ibid. issues a bull in favour of indulgences, 264. a suspension of proceedings against Luther, and why, 265. publishes a bull of excommunication against him, 267. the political views of his conduct between Charles and Francis, 298. concludes a treaty with Francis, 299. concludes a treaty also with Charles, ibid. the conditions of the treaty with Charles, 300. its consequences to Italy, 308. is disappointed in a scheme formed by Monroe, chancellor of Milan, for attacking that dutchy, 309. excommunicates maréchal de Foix for his attack of Reggio, and declares against France, 310. takes a body of Swiss into pay, ibid. the French driven out of the Milanese, 313. he dies, 314. the spirit of the confederacy broken by his death, ibid.

L'Esparre, Foix de, commands the French troops in Navarre, for Henry d'Albret, iii. 302. reduces that kingdom, ibid. his imprudent progress into Castile, ibid. is taken prisoner by the Spaniards, and the French driven out of Navarre, 303.

Leonard, father, forms a scheme of betraying Metz to the imperialists, v. 52. introduced soldiers clad like friars, 53. is detected, 54. is murdered by his monks, 56.

Levesque, Dom, his account of the motives which induced the emperor Charles the fifth to resign his hereditary dominions, v. 81, t.

Lewis the second, king of Hungary and Bohemia, his character, iii. 447. is invaded and killed by Solyman the magnificent, 448.

Leyva, Antonio de, defends Pavia for the emperor against Francis, iii. 385. his vigorous defence, 386. sallies out at the battle of Pavia, and contributes to the defeat of Francis, 391. is left governor of Milan by the duke of Bourbon, 438. defeats the forces there, iv. 19. is appointed generalissimo of the Italian league, 46. directs the operations of the invasion of France, under the emperor, 97. dies, 103.

Liberty, civil, the rise and progress of, traced, iii. 28. how favoured by the ordinances of Louis the tenth of France and his brother Philip, 36. the spirit of, how excited in France, v. 245. the particulars included in the charters of, granted to husbandmen, 247. the influence of the christian religion in extending, 248. the several opportunities of obtaining, 250.

Limoges, council of, its endeavours to extinguish private wars, v. 258.

Literature, the cultivation of, greatly instrumental in civilizing the nations of Europe, iii. 65. why the first efforts of, ill directed, 66. the good effects, nevertheless, of the spirit of inquiry exerted, 68. how checked in its progress, 68, 69. its influence on manners and government, 69. its obligations to the order of jesuits, iv. 151.

Liturgy, the preference between the Musarabic and Romish, how ascertained in Spain, v. 272.

Lombards, the first bankers in Europe, v. 310. the motive of their exacting exorbitant interest, 311.

London, its flourishing state at the time of Henry the second, v. 244.

Lorenzo de' Medici. See Medici.

Louis-le-gros of France, his inducement to grant privileges to towns within his own domains, iii. 29. See Charters.

Louis, St. the great attention he paid to the administration of justice, in appeals which came before him, v. 286.

Louis the tenth of France, his ordinances in favour of civil liberty, iii. 36.

Louis the eleventh of France, his character, iii. 87. his schemes for depressing the nobility, 88. sows divisions among them, 89. increases the standing forces, ibid. enlarges the revenues of the crown, 90. his address in overruling the assembly of states, ibid. extends the bounds of the French monarchy, 91. the activity of his external operations, ibid. his treacherous baseness towards the heiress of Burgundy, 95. the effects of his conduct, 96.

Louis the twelfth, his hesitation in carrying on war against the pope, iii. 119, s. asserts his right to the dutchy of Milan, and retains Ludovico Sforza in prison, 128, 129. receives homage of the archduke Philip, for the earldom of Flanders, 176, 177. concludes a treaty with him, while at war with Ferdinand of Aragon, 178. bestows his niece, Germaine de Foix, on Ferdinand, and concludes a peace with him, 183. loses the confidence of Philip on that occasion, 194, g. bestows his eldest daughter, already betrothed to Charles the fifth, on the count of Angouleme, ibid.

Louise of Savoy, mother of Francis the first of France, her character, iii. 311. her motives for seizing the money appointed for payment of maréchal Lautrec's troops, ibid. cause of her aversion to the house of Bourbon, 357. her advances toward a marriage with Charles, duke of Bourbon, rejected by him, 358. determines to ruin him, 359. instigates a lawsuit against him for his estates, ibid. goes to dissuade Francis from his intended invasion of the Mila-

nese, who will not wait for her, 383. is appointed regent during his absence, ibid. her prudent conduct on the defeat of Pavia, and captivity of her son Francis, 394. concludes a defensive alliance with Henry the eighth, 402. ratifies the treaty of Madrid for the recovery of her son's liberty, 415. undertakes, with Margaret of Savoy, to accommodate the differences between the emperor and Francis, iv. 21. articles of the peace of Cambray, 22.

Loyola, Ignatio, commands the castle of Pampeluna in Navarre, and is wounded in its defence, iii. 302. his enthusiastic turn of mind, ibid. the founder of the society of jesuits, ibid. prevails on the pope to establish the order, iv. 142. an examination into the constitution of the order, 143. office and power of the general, 144, 145. the rapid progress of the order, 147. See Jesuits.

Lorrain, cardinal of, persuades Henry the second of France to accept the offered alliance with pope Paul the fourth, and is sent to Rome to negotiate it, v. 75, 76. his imprudent behaviour towards the dutchess of Valentinois, 135.

Lunenburg, duke of, avows the opinions of Luther, iii. 371.

Luther, Martin, the happy consequences of the opinions propagated by him, iii. 249. his birth and education, 253. attacks indulgencies, 254. chosen philosophical professor at the university of Wittemberg, ibid. inveighs against the publishers of indulgences, 255. writes to Albert, elector of Mentz, against them, ibid. composes theses against indulgencies, ibid. is supported by the augustinians, and encouraged by Frederic, elector of Saxony, 256. is summoned to Rome by pope Leo, 259. obtains of the pope leave to have his doctrines examined in Germany, 260. appears before cardinal Cajetan at Augsburg, ibid. his resolute reply to the peremptory order of Cajetan, to retract his principles, 261. withdraws from Augsburg, and appeals from the pope ill informed, to the pope when better informed, concerning him, ibid. appeals to a general council, 263. the death of Maximilian, how of service to him, 264. questions the papal authority in a public disputation, 265. his opinions condemned by the universities of Cologne and Louvain, 266. a bull of excommunication published against him, 267. pronounces the pope to be antichrist, and burns the bull, 268. reflections on the conduct of the court of Rome toward him, 269. reflections on his conduct, 270, 271. causes which contributed to favour his opposition to the church of Rome, 272. particularly the art of printing, 286. and the revival of learning, ibid. he is summoned to appear at the diet of Worms, 292. a safe-conduct granted him thither, ibid. his reception there, 293. refuses to retract his opinions, ibid. departs, ibid. an edict published against him, ibid. he is seized and concealed at Wartburg, 294. progress of his doctrines, ibid. the university of Paris publishes a decree against him, 295. wrote against by Henry the eighth of England, ibid. answers both, 296. withdraws from his retreat to check the inconsiderate zeal of Carlostadius, 370. undertakes a translation of the bible, ibid. his doctrines avowed by several of the German princes, 374. his moderate and prudent conduct, 423. marries Catharine à Boria, a nun, 424. the great progress of his doctrines among the Germanic states, iv. 31. encourages the protestants, dispirited by the emperor's decree, against him, 37. his concern at the practices of the anabaptists at Munster, 60. is invited to Leipsic by Henry, duke of Saxony, 125. his opinion of Gropper's treatise to unite the protestants and catholics, 158. dies, 231. summary of his character, 231, 234. extract from his last will, 234, d. See Protestants. a view of the extraordinary effects of his revolt from the church of Rome, on that court, and on Europe in general, v. 165, 172.

Luxemburg, invaded by Robert de la Mark, lord of Bouillon, iii. 303, 304. invaded and overrun by the duke of Orleans, iv. 179. is again invaded by Francis, 186.

Madrid, treaty of, between the emperor Charles the fifth, and his prisoner Francis the first, king of France, iii. 412, 413. sentiments of the public with regard to this treaty, 413, 414.

Magdeburg, the city of, refuses to admit the 'Interim' enforced by Charles the fifth, and prepares for defence, iv. 357. Maurice, elector of Saxony, appointed to reduce it, ibid. is put under the ban of the empire, 370. the territories of,

invaded by George of Mecklenburg, ibid. the inhabitants defeated in a sally, ibid. Maurice of Saxony arrives and besieges the city, 371. surrenders, 372. the senate elects Maurice their burgrave, 373.
Mahmed, king of Tunis, history of his sons, iv. 70, 71.
Majorca, an insurrection there, iii. 351. which is quelled with difficulty, 352. the moderation of Charles towards the insurgents on his arrival in Spain, 353.
Majesty, the appellation of, assumed by Charles the fifth on his election to the imperial crown, and taken by all the other monarchs of Europe, iii. 232.
Malines, council of, an account of, iv. 131.
Malta, the island of, granted by the emperor Charles the fifth to the knights of St. John, expelled from Rhodes by the Turks, iii. 322.
Mamalukes, extirpated by sultan Selim the second, iii. 222.
Mamalukes, a faction in Geneva, so termed, some account of, iv. 88.
Manfred, his struggles for the crown of Naples, iii. 124.
Mankind, the most calamitous period in the history of, pointed out, iii. 9.
Manners, the barbarity of, under the feudal establishments after the overthrow of the Roman empire, iii. 16. when they began to improve, 19. effects of the crusades on, 23. how improved by the enfranchisement of cities, 30. how improved by the erection of royal courts of justice, in opposition to the barons' court, 56. effects of the revival of the Roman law on, 59. the beneficial tendency of the spirit of chivalry on, 62. how influenced by the progress of science, 65, 69. how polished by the revival of commerce, 69.
Manuel, don John, Ferdinand's ambassador at the imperial court, pays his court to the archduke Philip on queen Isabella's death, iii. 181. intercepts Joanna's letter of consent to Ferdinand's regency of Castile, 182. negotiates a treaty between Ferdinand and Philip, 184. declares for Maximilian's regency on Philip's death, 189. is made imperial ambassador at Rome, and concludes an alliance between Charles the fifth and Leo the tenth, 299, 300. conditions of the treaty, 300. procures Adrian of Utrecht to be elected pope, 315.
Manumission, particulars included in the charters of, granted to husbandmen or slaves, v. 247. the form of, 249.
Marcellus the second, pope, his character, v. 68. dies, 69.
Marciano, battle of, between Peter Strozzi and the marquis de Marignano, v. 46.
Margaret of Austria, and dowager of Savoy, aunt to Charles the fifth, undertakes with Louise, mother of Francis the first of France, to accommodate the differences between those two monarchs, iv. 21. articles of the peace of Cambray, 22.
Marignano, marquis of, appointed commander of the Florentine army acting against the French, v. 44. defeats the French army under Peter Strozzi, 46. lays siege to Siena, 47. converts the siege into a blockade, 48. Siena surrenders, 48, 49. reduces Porto Ercole, 50. his troops ordered into Piedmont by the emperor, 51.
Mark, Robert de la, lord of Bouillon, declares war against the emperor Charles the fifth, ii. 303. ravages Luxemburg with French troops, 304. is commanded to disband his troops by Francis, ibid. his territories reduced by the emperor, ibid.
Marseilles besieged by the imperialists, iii. 381. rescued by Francis, ibid. interview and treaty there between the pope and Francis, iv. 49.
Martinuzzi, bishop of Waradin, is appointed guardian to Stephen, king of Hungary, iv. 162. his character, ibid. solicits the assistance of sultan Solyman against Ferdinand, 163. Solyman seizes the kingdom, 164. is appointed to the government of Transylvania, and the education of the young king, jointly with the queen, 377. negotiates with Ferdinand, 378. prevails with the queen to resign Transylvania to Ferdinand, 379. is appointed governor of Transylvania, and made a cardinal, 380. is assassinated by Ferdinand's order, 382.
Martyr, Peter, his authority cited in proof of the extortions of the Flemish ministers of Charles the fifth, iii. 217.
Mary of Burgundy, contracted to Louis the twelfth of France, but married to the emperor Maximilian, iii. 175.

Mary of England, her accession, v. 33. receives proposals from the emperor Charles the fifth of marrying his son Philip, ibid. the English averse to this union, ibid. the house of commons remonstrates against the match, 34. the articles of marriage, 34, 35. the marriage ratified by parliament, and completed, 36, 37. reestablishes the Romish religion, 37. persecutes the reformers, 38. invites Charles to England on his resignation and passage to Spain, which he declines, 100. is engaged by Philip to assist him in his war against France, 108. levies money by her prerogative to carry on the war, 108, 109. her neglect in the security of Calais, 124. Calais invested and taken by the duke of Guise, 125. dies, 144.

Mary, daughter of James the fifth of Scotland, succeeds to the crown an infant, iv. 184. is contracted to the dauphin of France, 366. is educated at the court of France, ibid. the marriage completed, v. 129, 130. assumes the title and arms of England on the death of Mary, 146.

Matthias, John, a baker, becomes a leader of the anabaptists at Munster, iv. 55. seizes the city, and establishes a new form of government there, 56. repulses the bishop of Munster, 57. is killed, ibid. See Boccold and Anabaptists.

Maurice, duke of Saxony, his motives for not acceding to the protestant league of Smalkalde, iv. 191. marches to the assistance of Ferdinand in Hungary, ibid. his difference with his cousin the elector, 192. his conduct at the diet of Worms, 218. joins the emperor against the protestants, 251. his motives, 263. his insidious conduct towards the elector, 264. seizes the electorate of Saxony, 265. Saxony recovered by the elector, 273. his ineffectual endeavours to reduce Wittemberg for the emperor, 305. obtains possession of the electorate, 308. is formally invested at the diet of Augsburg, 333. becomes dissatisfied with the emperor, 351. his motives to discontent explained, 352. his address and caution in his conduct, 353. enforces the 'Interim' in his territories, 334. makes, nevertheless, professions of his attachment to the reformation, 355. undertakes to reduce Magdeburg to submit to the 'Interim,' ibid. protests against the council of Trent, 356. is commissioned by the emperor to reduce Magdeburg, 357. joins George of Mecklenburg before Magdeburg, 371. the city capitulates, 372. begins to intrigue with count Mansfeldt, 373. is elected burgrave of Magdeburg, ibid. dismisses his troops, 375. his address in amusing the emperor, ibid. makes an alliance with Henry the second of France, to make war on the emperor, 383, 384. makes a formal requisition of the landgrave's liberty, 385. joins his troops, and publishes a manifesto, 390, 391. takes possession of Augsburg and other cities, 392. an ineffectual negotiation with Charles, 394. defeats a body of the emperor's troops, 395. takes the castle of Ehrenburg, ibid. is retarded by a mutiny in his troops, 396. enters Inspruck, and narrowly misses taking Charles, 397. a negotiation between him and Ferdinand, 404. besieges Francfort on the Main, 409. his inducements to an accommodation, 410. signs a treaty with the emperor at Passau, 411. reflections on his conduct in this war, 412. marches into Hungary to oppose the Turks, v. 1. is placed at the head of the league against Albert of Brandenburg, 17. defeats Albert, but is killed in the battle, 18. his character, 18, 19. is succeeded by his brother Augustus, 20.

Maximilian, archduke of Austria, married to Mary, heiress of Burgundy, iii. 96. the influence of this match on the state of Europe, ibid.

Maximilian, emperor, institutes the imperial chamber, iii. 161. reforms the Aulic council, ibid. claims the regency of Castile on his son Philip's death, 189. is supported in his claim by don John Manuel, ibid. loses it, 190. obtains the government of the Low Countries by the death of Philip, 194. appoints William de Croy, lord of Chièvres, to superintend the education of his grandson Charles, ibid. concludes a peace with France and Venice, 211. dies, 220. state of Europe at this period, 220, 221. his endeavours to secure the imperial crown to his grandson Charles, 221. how obstructed, ibid.

Mecklenburg, George of, invades the territories of Magdeburg for the emperor, iv. 370. defeats the Magdeburghers, who sally out on him, ibid. is joined by Maurice of Saxony, who assumes the supreme command, 371.

Medici, Cosmo de', the first of the name, the influence he acquired in Florence, iii. 122.

Medici, Alexander, restored to the dominions of Florence by the emperor Charles, iv. 30. is assassinated, 115.
Medici, cardinal de', elected pope, and assumes the title of Clement the seventh, iii. 363. See Clement the seventh.
Medici, Catherine de', is married to the duke of Orleans, iv. 50. is conjectured by the emperor Charles the fifth to have poisoned the dauphin, 106.
Medici, Cosmo de', made duke of Florence, iv. 116. is supported by the emperor, and defeats the partisans of Lorenzo, 117. asserts his independency against the emperor, v. 12. offers to reduce Siena for the emperor, 43. enters into a war with France, 44. See Marignano. his address in procuring the investiture of Siena from Philip the second of Spain, 120. it is granted to him, 121.
Medici, Lorenzo de', assassinates his kinsman Alexander, iv. 115. flies, 116. attempts to oppose Cosmo, but is defeated, 117, 118.
Medicino, John James. See Marignano.
Medina del Campo, the inhabitants of, refuse to let Fonseca take the military stores there for the siege of the insurgents in Segovia, iii. 326. the town almost burnt by Fonseca, ibid. the inhabitants repulse him, ibid. surrenders after the battle of Villalar, and dissolution of the holy junta, 346.
Melancthon, imbibes the opinions of Martin Luther, iii. 269. is employed to draw up a confession of faith by the protestant princes at the diet of Augsburg, iv. 35. is dejected by the emperor's decree against the protestants, but comforted by Luther, 37. is invited to Paris by Francis, 83. his conference with Eccius, 157. is prevailed on to favour the 'Interim' enforced by the emperor, 354.
Melito, conde de, made viceroy of Valencia on the departure of Charles the fifth for Germany, iii. 237. appointed to command the troops of the nobles against the germanada, 350, 351. defeated by them in several actions, 351. destroys the association, ibid.
Mentz, archbishop of, artfully declares before the emperor the diet of Augsburg's acceptance of the 'Interim,' without being authorized by it, iv. 332.
Merveille, a Milanese gentleman, employed as envoy from Francis the first to Francis Sforza, duke of Milan, his fate, iv. 82.
Metz, seized by Montmorency the French general, iv. 394. the duke of Guise made governor of, v. 4, 5. is besieged by the emperor, 7. the emperor desists, and retires in a distressed condition, 11. a scheme formed by father Leonard to betray the city to the imperialists, 52. the conspiracy detected by the governor, 53. Leonard murdered by his monks, and his associates executed, 54.
Mézières, in France, besieged by the imperialists, iii. 304. gallant defence of, by the chevalier Bayard, 305. the siege raised, ibid.
Milan, the state of the dutchy of, at the commencement of the sixteenth century, iii. 126. rise and progress of the disputes concerning the succession to, 126, 128. maréchal de Foix appointed to be the French governor of, 309. his character, ibid. the Milanese alienated from the French by his oppressions, ibid. invaded by the ecclesiastical troops under Prosper Colonna, 310. the French driven out, 313. oppressed by the imperial troops, 355. invaded by the French, 361. who are driven out by Colonna, 362. the imperial troops there mutiny for pay, but are appeased by Morone, 367. abandoned by the French, ibid. overrun again by Francis, who seizes the city, 384. the French retire on the news of the battle of Pavia, 392. the investiture of, granted to Sforza, 403. taken from him and granted to the duke of Bourbon, 410. disorders committed by the imperial troops there, 427. oppressive measures of Bourbon to supply his mutinous troops, 436. the French forces there defeated by Antonio de Leyva, iv. 19. is again granted by the emperor to Sforza, 29. death of Sforza, 90. the pretensions of Francis to that dutchy, ibid. is seized by the emperor, 91. the marquis del Guasto appointed governor, 104.
Mind, the human, a view of, under the first establishment of the feudal policy in Europe, iii. 18. the æra of its ultimate depression, and commencement of

its improvement, 19. the progress of its operations, before the full exertion of it, 66.
Ministeriales, a class of the oblati, or voluntary slaves, the pious motives of the obligations they entered into, v. 251.
Mohacz, battle of, between Solyman the magnificent and the Hungarians, iii. 448.
Monastic orders, inquiry into the fundamental principles of, iv. 142. peculiar constitution of the order of jesuits, 143.
Moncada, don Hugo de, the imperial ambassador at Rome, his intrigues with cardinal Colonna against pope Clement, iii. 434. reduces the pope to an accommodation, ibid. is defeated and killed by Andrew Doria in a naval engagement before the harbour of Naples, iv. 13.
Monluc, is sent by the count d'Enguien to Francis for permission to give battle to the marquis del Guasto, iv. 200. obtains his suit by his spirited arguments, 201. commands in Siena when besieged by the marquis de Marignano, v. 47. his vigorous defence, 47, 48. is reduced by famine, and capitulates, 48, 49.
Monte Alcino, numbers of the citizens of Siena retire thither after the reduction of that city by the Florentines, and establish a free government there, v. 49.
Montecuculi, count of, accused and tortured for poisoning the dauphin, charges the emperor with instigating it, iv. 106.
Montmorency, maréchal, his character, iv. 100. Francis adopts his plan for resisting the emperor, and commits the execution to him, ibid. his precautions, ibid. his troops despise his conduct, 102. observations on his operations, 104. is disgraced, 178. conducts the army of Henry the second to join Maurice of Saxony, and seizes Metz, 394. dissuades Henry from accepting the offered alliance with pope Paul the fourth, v. 74. commands the French army against the duke of Savoy, 111. detaches Dandelot to relieve St. Quentin, ibid. exposes himself imprudently to an action, and is defeated, 112. is taken prisoner, ibid. negotiates a peace between Philip and Henry, 135. returns to France, and is highly honoured by Henry, 136. his assiduity in forwarding the negotiations, 147. his expedient for promoting the treaty of Chateau Cambresis, 150.
Montpélier, a fruitless conference held there for the restitution of the kingdom of Navarre, iii. 219.
Moors, make a conquest of Spain, iii. 130. by what means weakened during their establishment there, 130, 131. remarks on their conduct in Spain, 132.
Morone, Jerome, chancellor of Milan, his character, iii. 309. retires from the French exactions in Milan to Francis Sforza, ibid. his intrigues, how rendered abortive, ibid. quiets the mutiny of the imperial troops in Milan, 361. is disgusted with the behaviour of Charles, 403. intrigues against the emperor, with Pescara, 403, 404. is betrayed to the emperor by Pescara, 406. is arrested at his visit to Pescara, 407. is set at liberty by the duke of Bourbon, and becomes his confidant, 436.
Mouson, in France, taken by the imperialists, iii. 304. retaken by Francis, 305.
Mulhausen, battle of, between the emperor Charles the fifth, and the elector of Saxony, iv. 301.
Muley-Hascen, king of Tunis, his inhuman treatment of his father and brothers, iv. 70. is expelled by Barbarossa, 72. engages the emperor Charles the fifth to restore him, 73. is established again by the surrender of Tunis, 78. his treaty with Charles, ibid.
Muncer, Thomas, a disciple of Luther, opposes him with fanatical notions, iii. 420. heads the insurrection of the peasants in Thuringia, 422. his extravagant schemes, ibid. is defeated and put to death, 422, 423.
Municipal privileges, how obtained by the cities of Italy, v. 228. secured to them by the treaty of Constance, 231. the favourable state of, under the Roman government, 239.
Munster, the first settlement of the anabaptists in that city, iv. 55. the city seized by them, 56. they establish a new form of government there, ibid.

is called Mount Sion, 57. the bishop of, repulsed by them, ibid. is blockaded by the bishop, 61. the city taken, 62. See Anabaptists.
Murder, the prices of composition for, by the Romish clergy, iii. 276.
Mustapha, the declared heir to sultan Solyman the magnificent, is invested with the administration of Diarbequir, v. 27. his father rendered jealous of his popularity, by the arts of Roxalana, 27, 28. is strangled by his father's order, 30. his only son murdered, 31.
Naples, a view of the constitution of that kingdom at the commencement of the sixteenth century, iii. 123. the turbulent unsettled state of that kingdom, ibid. state of the disputes concerning the succession of the crown of, 124 the pretensions of the French and Spanish monarchs to the crown of, 125. the revenues of, mortgaged by Lannoy to supply the emperor in his exigencies, 384. invaded by the French under the duke of Albany, 388. invaded by pope Clement the seventh, 437. treaty between the pope and Lannoy, viceroy of, 440. the prince of Orange retreats thither before Lautrec, iv. 12. is blockaded by Lautrec, ibid. sea-engagement in the harbour of, between Andrew Doria and Moncada, 13. causes which disappointed the French operations against, ibid. Doria revolts, and opens the communication by sea again, 14, 16. oppressed by the Spanish viceroy, Don Pedro de Toledo, becomes disaffected to the emperor Charles the fifth, v. 14. is harassed by a Turkish fleet, 15.
Narbonne, community of, preamble to the writ of summons of Philip the long to, v. 245.
Nassau, count of, invades Bouillon at the head of the imperialists, iii. 304. invades France, takes Mouson, and besieges Mézières, but is repulsed, 304, 305.
Navarre, the kingdom of, unjustly acquired by Ferdinand of Aragon, iii. 191. d'Albret's invasion of, defeated by cardinal Ximenes, 208. its castles dismantled, except Pampeluna, which Ximenes strengthens, ibid. invaded by Francis the first, in the name of Henry d'Albret, 302. reduced by l'Esparre, the French general, ibid. the French driven out by the Spaniards, and l'Esparre taken prisoner, 303.
Navigation, proof of the imperfect state of, during the middle ages, v. 312.
Netherlands, vigorous prosecution of the manufacturers of hemp and flax there, on the revival of commerce in Europe, 73. the government of, first assumed by Charles the fifth, 196. the Flemings averse to Charles's going to Spain, 212. invaded by Francis the first, king of France, 305. a truce concluded with, by Henry the eighth of England, iv. 14. invaded by Francis again, 108. a suspension of arms there, ibid. an insurrection at Ghent, 130. See Ghent. is once more invaded by Francis, 186. resigned by the emperor to his son Philip, v. 83. a review of the alterations in, during the sixteenth century, 155.
Nice, a truce for ten years concluded there between the emperor and Francis, iv. 113. besieged by the French and Turks, 189.
Normans, why so few traces of their usages and language to be found in England, in comparison with those of the Saxons, v. 181.
Noyon, treaty of, between Charles the fifth, and Francis the first of France, iii. 211. the terms of, neglected by Charles, 240.
Nuremberg, the city of, embraces the reformed religion, iii. 371. diet of, particulars of pope Adrian's brief to, respecting the reformers, 372. the reply to, 373. proposes a general council, ibid. presents a list of grievances to the pope, 374. the recess or edict of, 374, 375. this diet of great advantage to the reformers, 375. proceedings of a second diet there, 377. recess of the diet, ibid. an accommodation agreed to there between the emperor Charles the fifth and the protestants, iv. 42.
Oblati, or voluntary slaves, the classes of, specified, v. 251.
Oran, and other places in Barbary, annexed to the crown of Castile by Ximenes, iii. 191.
Orange, Philibert de Chalons, prince of, general of the imperial army on the death of the duke of Bourbon, takes the castle of St. Angelo, and pope Clement the seventh prisoner, iii. 447. retires to Naples on the approach of Lautrec, iv. 12. takes his successor the marquis de Saluces prisoner at Aversa, 17.

Ordeal, methods of trial by, during the middle ages, iii. 45. the influence of superstition in dictating these means, 45, 46.
Orleans, duke of, delivered up to the emperor Charles the fifth, with the dauphin, as hostages for the performance of the treaty of Madrid, iii. 416. is married to Catherine de Medici, iv. 50. becomes dauphin by the death of his brother, 106. See Dauphin.
Orleans, duke of, brother to the former, commands the army appointed by Francis the first, for the invasion of Luxemburg, iv. 178. is prompted by envy to abandon his conquests, and join his brother the dauphin in Roussillon, 180. dies, 221.
Otto, Frisingensis, his account of the state of Italy under Frederic the first, v. 229.
Ottoman empire, the origin, and despotic nature of, iii. 167, 168. becomes formidable to the christian powers, 172.
Pacheco, doña Maria, wife to don John de Padilla, her artful scheme to raise money to supply the army of the holy junta, iii. 340, 341. her husband taken prisoner and executed, 344, 345. his letter to her, 345, t. defends Toledo with great spirit, 347. raises forces to revenge his death, ibid. is reduced, and retires to Portugal, 349.
Padilla, don John de, his family and character, iii. 324. heads the insurrection at Toledo, ibid. routs the troops under Ronquillo, 326. calls a convention of the malecontents at Avila, 329. forms the confederacy called the holy junta, ibid. disclaims Adrian's authority, ibid. gets possession of queen Joanna, ibid. removes the holy junta to Tordesillas, the place of her residence, 330. sent with troops to Valladolid, and deprives Adrian of all power of government, 331. is superseded in the command of the army of the junta, by don Pedro de Giron, 338. is appointed commander at the resignation of Giron, 340. his army supplied with money by an expedient of his wife, 340, 341. besieges Torrelobaton, 343. takes and plunders it, ibid. concludes a truce with the nobles, ibid. is wounded and taken prisoner in an action with the conde de Haro, 344. is put to death, 345. his letter to his wife, 345, t. his letter to the city of Toledo, ibid.
Palatinate, the reformation established there by the elector Frederic, iv. 223.
Palatine, count, ambassador from the diet at Frankfort, brings Charles the fifth the offer of the imperial crown, which he accepts, iii. 233.
Pampeluna, castle of, in Navarre, its fortifications strengthened by cardinal Ximenes, iii. 208. taken by l'Esparre, the French general, for Henry d'Albret, 302. retaken from the French, 303.
Papacy. See Popedom. how liable to be affected by the disposal of the imperial crown, iii. 226, 227.
Paper, when first made of the present materials, v. 217.
Paraguay, a sovereignty established there by the order of jesuits, iv. 152. the inhabitants of, civilized by them, 153. precautions used by the jesuits to preserve the independency of their empire there, 153, 154.
Paris, an inquiry into the preeminent jurisdiction of its parliament over the other parliaments of France, iii. 153, 154. a decree published by the university of, against Martin Luther the reformer, 295. a decree of the parliament of, published against the emperor Charles the fifth, iv. 107. its origin traced, v. 346. the royal edicts registered by, before admitted to be laws, 349.
Parliaments, or legislative assemblies, how formed under the feudal policy, iii. 33. how altered by the progress of civil liberty, 34.
Parma, the dutchy of, confirmed to Octavio Farnese by pope Julius the third, iv. 365. is attacked by the imperialists, and successfully protected by the French, 367.
Passau, a treaty concluded there between the emperor Charles the fifth, and Maurice of Saxony, iv. 411. reflections on this peace, and the conduct of Maurice, 412.
Pavia, besieged by Francis the first of France, iii. 385. vigorously defended by Antonio de Leyva, 386. battle of, between Francis and the duke of Bourbon, 390. the imperial troops in that city mutiny, 398.
Paul the third, pope, elected, iv. 52. his character, ibid. proposes a general

council to be held at Mantua, 65. negotiates personally between the emperor and Francis, 113. issues a bull for a council at Mantua, 121. prorogues and transfers it to Vicenza, 122. a partial reformation of abuses by, ibid. summons the council of Trent, 193. prorogues it, ibid. summons it again, 215. grants the dutchies of Parma and Placentia to his illegitimate son, 222. deprives and excommunicates the electoral bishop of Cologne, 237. presses the emperor to declare against the protestants, 238. concludes an alliance with him against the protestants, 243. indiscreetly publishes this treaty, 245. his troops join the emperor, 257. recalls them, 274. removes the council from Trent to Bologna, 323. refuses the emperor's request to carry the council back to Trent, ibid. his resentment against the emperor for the murder of his son cardinal Farnese, 326. is petitioned by the diet of Augsburg for the return of the council to Trent, 327. eludes the complying with this request, 329. his sentiments of the 'Interim,' published by Charles, 335. dismisses the council of Bologna, 340. annexes Parma and Placentia to the holy see, 345. dies, 346. the manner of his death inquired into, ibid. b.

Paul the fourth, pope, elected, v. 69. his character and history, ibid. founds the order of theatines, 70. is the principal occasion of establishing the inquisition in the papal territories, 71. lays aside his austerity on his election, ibid. his partiality to his nephews, 71, 72. is alienated from the emperor by his nephews, 73. makes overtures to an alliance with France, 74. is enraged by the recess of the diet of Augsburg, 76. signs a treaty with France, 78. is included in the truce for five years, concluded between the emperor and Henry, 89. his insidious artifices to defeat this truce, 91, 92. absolves Henry from his oath, and concludes a new treaty with him, 93. his violent proceedings against Philip, now king of Spain, 93, 94. the Campagna Romana seized by the duke d'Alva, 96. concludes a truce with Alva, ibid. contrast between his conduct and that of Charles, 103. renews his hostilities against Philip, 104. is unprovided for military operations, 105. is reduced to make peace with Philip, by the recall of the duke of Guise after the defeat of St. Quentin, 118. receives an ambassador from the emperor Ferdinand to notify his election, but refuses to see him, or to acknowledge the emperor, 127. dies, 152.

Paulin, a French officer, sent ambassador from Francis the first to sultan Soliman, iv. 185. his successful negotiations at the porte, 186.

Pembroke, earl of, sent by queen Mary of England with a body of men to join the Spanish army in the Low Countries, v. 109.

People, their wretched servile state under the feudal system, iii. 14. 35. released from their slavish state by the enfranchisement of cities, 30. how they obtained a representation in national councils, 34. those who lived in the country and cultivated the ground, an inquiry into their condition under the feudal policy, v. 209.

Perpignan, the capital of Roussillon, besieged by the dauphin of France, iv. 179. the siege raised, 180.

Persia, murder in, how punished there, v. 280.

Pescara, marquis de, takes Milan by assault, iii. 313. drives Bonnivet back to France, 368. his generous care of the chevalier Bayard, 369. commands in the invasion of Provence, 380. besieges Marseilles, 381. his army retires towards Italy on the appearance of the French troops, ibid. resigns Milan to the French, 384. prevails on the Spanish troops not to murmur at present for their pay, 385. contributes to the defeat of Francis at the battle of Pavia, 391. is disgusted at Francis being taken to Spain without his concurrence, 403. his resentment inflamed by Morone, 404. betrays Morone's designs to the emperor, 405. arrests Morone, 407. dies, 410.

Peter the hermit, excites the European princes to undertake the holy war, iii. 21.

Peter the fourth, king of Aragon, defeats the leaders of the Aragonese union, and destroys the privilege of these associations, v. 321.

Philip the long, preamble to his writ of summons to the community of Narbonne, v. 245.

Philip, archduke of Austria, and father of Charles the fifth, visits Spain with his wife Joanna, iii. 176. does homage by the way to Louis the twelfth, of France, for the earldom of Flanders, ibid. his title to the crown acknowledged

by the cortes, 177. is disgusted with the formality of the Spanish court, ibid. Ferdinand becomes jealous of his power, ibid. slights his wife, ibid. his abrupt departure from Spain, 178. passes through France, and enters into a treaty with Louis, ibid. his sentiments on Ferdinand's obtaining the regency of Castile, 181. requires Ferdinand to retire to Aragon, and resign his regency of Castile, 182. the regency of Castile vested jointly in him, Ferdinand, and Joanna, by the treaty of Salamanca, 184, 185. sets out for Spain, and is driven on the coast of England, where he is detained three months by Henry the seventh, 185. arrives at Corunna, ibid. the Castilian nobility declare openly for him, ibid. Ferdinand resigns the regency of Castile to him, 186. interview between them, ibid. acknowledged king of Castile by the cortes, 187. dies, ibid. Joanna's extraordinary conduct in regard to his body, 187, 188. See Joanna.

Philip, prince, son to the emperor Charles the fifth, his right of succession recognised by the cortes of Aragon and Valencia, iv. 181. is acknowledged by the states of the Netherlands, 342. his deportment disgusts the Flemings, ibid. his character, 363. is married to Mary queen of England, v. 34, 37. the English parliament jealous of him, 39. his father resigns his hereditary dominions to him, 78. is called by his father out of England, 83. the ceremony of investing him, ibid. his father's address to him, ibid. commissions cardinal Granvelle to address the assembly in his name, 85. Mary, queen dowager of Hungary, resigns her regency, 86. the dominions of Spain resigned to him, ibid. his unpoliteness to the French ambassador Coligni, 89, z. the pope's violent proceedings against him, 93. his scruples concerning commencing hostilities against the pope, 95. his ungrateful neglect in paying his father's pension, 101. the pope renews hostilities against him, 104. assembles an army in the Low Countries against France, 107. goes over to England to engage that kingdom in the war, 108. visits the camp at St. Quentin, after the victory, 113. opposes the scheme of penetrating to Paris, and orders the siege of St. Quentin to be prosecuted, 114. St. Quentin taken by assault, 115. the small advantages he reaped by these successes, 116. builds the Escurial, in memory of the battle of St. Quentin, 117. concludes a peace with the pope, 118. restores Placentia to Octavio Farnese, 119. grants the investiture of Siena to Cosmo de' Medici, 121. enters into negotiations for peace with his prisoner Montmorency, 136. death of queen Mary, 144. addresses her successor Elizabeth for marriage, ibid. Elizabeth's motives for rejecting him, 146. her evasive answer to him, ibid. supplants his son don Carlos, and marries Henry's daughter Elizabeth, 150. articles of the treaty of Chateau Cambresis, 150, 151.

Philibert, Emanuel, duke of Savoy. See Savoy.

Phillipino, nephew to Andrew Doria, defeats Moncada in a sea-engagement before the harbour of Naples, iv. 13.

Philosophy, cultivated by the Arabians, when lost in Europe, v. 299. its progress from them into Europe, 300.

Piadena, marquis de, invades Transylvania for Ferdinand, iv. 378. misrepresents cardinal Martinuzzi to Ferdinand, and obtains a commission to assassinate him, 381, 382. is forced to abandon Transylvania, v. 24.

Picardy, invaded by Henry the eighth, iii. 320. Henry forced by the duke de Vendôme to retire, ibid. invaded again under the duke of Suffolk, 365. who penetrates almost to Paris, but is driven back, 365, 366. ineffectual invasion by the imperialists, iv. 105.

Pilgrimages to the Holy Land, when first undertaken, iii. 20. See Crusades, and Peter the hermit.

Placentia, council of, the holy war resolved on by, iii. 21. See Peter the hermit, and Crusades. the dutchy of, granted, together with that of Parma, by pope Paul the third, to his natural son cardinal Farnese, iv. 222. Farnese assassinated there, 325. is taken possession of by the imperial troops, ibid. restored to Octavio Farnese by Philip the second of Spain, v. 119.

Plunder, how divided among the ancient northern nations, iii. 11. illustrated in an anecdote of Clovis, 195.

Pole, cardinal, arrives in England with a legatine commission, v. 37. endea-

vours to mediate a peace between the emperor and the king of France, without success, 56. is recalled from the court of England by pope Paul the fourth, 104.
Popedom, the highest dignity in Europe at the commencement of the sixteenth century, iii. 112. origin and progress of the papal power, ibid. the territories of the popes unequal to the support of their spiritual jurisdiction, 113. their authority in their own territories extremely limited, ibid. the check they received from the Roman barons, 114. Nicolas Rienzo attempts to establish a democratical government in Rome, and to destroy the papal jurisdiction, 115. the papal authority considerably strengthened by the popes Alexander the sixth and Julius the second, 116. See Julius the second. the permanent nature of ecclesiastical dominion, ibid. the civil administration of, not uniform or consistent, 117. Rome the school of political intrigue during the sixteenth century, ibid. the advantages derived from the union of spiritual and temporal authority, 118. a view of the contests between the popes and the emperors of Germany, 158.
Populousness, of the ancient northern nations, an inquiry into, iii. 4.
Prague, its privileges abridged by Ferdinand, king of Bohemia, iv. 320.
Printing, its effects on the progress of the reformation, iii. 286.
Priscus, extract from his account of the Roman embassy to Attila, king of the Huns, v. 180.
Procopius, his account of the cruel devastations made by the irruption of the northern nations, v. 182. 184.
Property, the possession of, how secured by the French charters of communities, v. 235.
Protestants, the derivation of the name, iv. 33. of whom they originally consisted, ibid. a severe decree published against them by the emperor, 37. they enter into a league, ibid. See Smalkalde. renew their league, and apply to Francis, king of France, and Henry the eighth, of England, for protection, 40, 41. are secretly encouraged by Francis, 41. receive a supply of money from Henry, ibid. terms of the pacification agreed to between them and the emperor at Nuremberg, 42. assist the emperor against the Turks, 43. their negotiations with the pope, relative to a general council, 45. renew the league of Smalkalde for ten years, 66. the motives for refusing to assist the king of France against the emperor, 85. refuse to acknowledge the council summoned by the pope at Mantua, 121. a conference between their principal divines and a deputation of catholics at Ratisbon, 157. this conference how rendered fruitless, 158. obtain a private grant from Charles in their favour, 160. drive the duke of Brunswick from his dominions, 194. all rigorous edicts against them suspended by a recess of the diet of Spires, 198. their remonstrances to Ferdinand at the diet of Worms, 216, 217. their inflexible adherence to the recess of Spires, 218. disclaim all connexion with the council of Trent, ibid. are strengthened by the accession of Frederic, elector palatine, 224. are alarmed at the proceedings of the emperor, 227. 242. the emperor leagues with the pope against them, 243. prepare to resist the emperor, 247. levy an army, 250. the operations of the army distracted by the joint commanders, 256. the army dispersed, 270. the elector of Saxony reduced, 302. the landgrave deceived by treaty, and confined, 313, 314. the emperor's cruel treatment of him, 317. the 'Interim,' a system of theology recommended by the emperor to the diet at Augsburg, 332. are promised protection by the emperor at the council of Trent, 359. the emperor proceeds rigorously against them, 369. their deputies obtain a safe-conduct from the emperor, but are refused by the council, 376, 377. Maurice of Saxony raises an army in their cause, 390. See Maurice. treaty of Passau, 411. the protestant princes again unite to strengthen the protestant interest, v. 61. recess of the diet of Augsburg on the subject of religion, 63. why originally averse to the principles of toleration, 66.
Proveditori, in the Venetian policy, their office, iii. 120.
Provence is laid waste by the marechal Montmorency on the approach of the emperor Charles the fifth, iv. 100. is entered by the emperor, 101. the disastrous retreat of the emperor from, 103. 104.
Prussia, when conquered by the Teutonic order, iii. 424. is erected into a

dutchy, and finally into a kingdom, and enjoyed by the house of Brandenburg, 425.
Ratisbon, a conference between a deputation of protestant and catholic divines, before the emperor and diet there, iv. 157. this conference how rendered fruitless, 158. a diet opened there by the emperor, 240. the catholic members of, assert the authority of the council of Trent, 241. the protestants present a memorial against it, ibid. the protestant deputies retire, 243.
Reformation in religion, the rise of, explained, iii. 249. the diet at Worms called by Charles the fifth to check the progress of, ibid. account of Martin Luther the reformer, 253. beginning of, in Switzerland, by Zuinglius, 266. state of, in Germany, at the arrival of Charles the fifth, 268. reflections on the conduct of the court of Rome towards Luther, 269. and on Luther's conduct, 270, 271. inquiry into the causes which contributed to the progress of, 272. observations on the pontificate of Alexander the sixth, and Julius the second, 273. the immoral lives of the Romish clergy, 274. the progress of, favoured by the invention of printing, 286. and the revival of learning, ibid. the great progress of, in Germany, 369. measures employed by Adrian to check its progress, 371, 372. advantages derived to, from the diet at Nuremburg, 375. the dissensions between the emperor and the pope, favourable to, 449. the great spread of, among the German princes, iv. 30, 31. the confession of Augsburg drawn up by Melancthon, 35. causes which led to the reformation of England, 50, 51. the excesses it gave rise to, 51. See Protestant, Maurice, and Smalkalde. is established in Saxony, 125. the great alteration occasioned by, in the court of Rome, v. 167. contributed to improve both the morals and learning of the Romish church, 170.
Reggio, invested by the French, who are repulsed by the governor, Guicciardini the historian, iii. 310. plundered and burnt by Barbarossa, iv. 189.
Religion, how corrupted by the northern nations established in Europe under the feudal policy, iii. 17. its influence in freeing mankind from the feudal servitude, v. 248.
Remonstrance of grievances drawn up by the holy junta, the particulars of, iii. 332, 333. remarks on, 335.
Repledging, the right of, in the law of Scotland, explained, v. 283.
Reproach, words of, the ancient Swedish law of satisfaction for, v. 270.
Revenues, royal, very small under the feudal policy, iii. 77. by what means increased, 104.
Reverse, a deed so called, signed by the archduke Ferdinand on being elected king of Bohemia, iii. 449.
Rhodes, the island of, besieged by Solyman the magnificent, iii. 321. taken by him, ibid. the island of Malta granted to the knights of, by the emperor Charles the fifth, 322.
Rhine, origin and intention of the league of, v. 267.
Richelieu, cardinal, his remarks on de Retz's History of Fiesco's Conspiracy, iv. 287, c.
Rienzo, Nicolas, endeavours to rescue Rome from the papal authority, and establish a democratical form of government there, iii. 115.
Rincon, the French ambassador at the porte, the motives of his return to France, iv. 175. is murdered in his journey back to Constantinople, by order of the imperial governor of the Milanese, 176.
Robbers, the anathema pronounced against them during the middle ages, v. 307, 308.
Rodolph of Hapsburgh, how he attained election to the empire of Germany, iii. 159.
Romans, an inquiry into those advantages which enabled them to conquer the rest of Europe, iii. 1, 2. the improvements they communicated in return for their conquests, 2. the disadvantages the provinces laboured under from their dominion, 2, 3. their empire overturned by the irruption of the barbarous nations, 3. the concurrent causes of their ruin, 6. a comparison drawn between them and the northern nations, 7. all the civil arts established by them obliterated, 16. the monuments of their arts industriously destroyed by their barbarous invaders, 66.

Rome, reflections on the conduct of the court of, respecting the proceedings against Martin Luther, iii. 269. the exorbitant wealth of the church of, previous to the reformation, 277. venality of, 284. how it drained other countries of their wealth, ibid. the city seized by cardinal Colonna, and pope Clement the seventh besieged in the castle of St. Angelo, 434. the city taken by the imperialists, and Bourbon killed, 444. is plundered, 445. the great revolution in the court of, during the sixteenth century, v. 165. how affected by the revolt of Luther, 166. the spirit of its government changed by, 168.

Rome, papal. See Popedom.

Ronquillo, sent by cardinal Adrian with troops to suppress the insurrection in Segovia, iii. 325. is routed by the insurgents, 326.

Rovere, Francesco Maria de, restored to his dutchy of Urbino by pope Adrian, iii. 354.

Roxalana, a Russian captive, becomes the favourite mistress of sultan Solyman the magnificent, v. 25. her only daughter married to Rustan the grand vizier, ibid. procures herself to be declared a free woman by the sultan, 26. is formally married to him, ibid. renders Solyman jealous of the virtues of his son Mustapha, 27, 28. Mustapha strangled, 30.

Royal truce, an account of, v. 261.

Rustan, grand vizier to Solyman the magnificent, is married to his daughter by Roxalana, v. 25. enters into Roxalana's scheme to ruin Solyman's son Mustapha, ibid. is sent with an army to destroy him, 29. draws Solyman to the army by false reports, ibid.

Salamanca, treaty of, between Ferdinand of Aragon and his son-in-law Philip, iii. 184.

Salerno, prince of, heads the disaffected Neapolitans against the oppressions of the viceroy Don Pedro de Toledo, v. 14. solicits aid from Henry the second, of France, who instigates the Turks to invade Naples, 15.

Salic laws, the manner in which they were enacted, v. 335.

Saluces, marquis de, succeeds Lautrec in the command of the French army before Naples, iv. 17. retires to Aversa, where he is taken prisoner by the prince of Orange, ibid. betrays his charge in Piedmont, 98, 99.

Sancerre, count de, defends St. Disier against the emperor Charles, iv. 204. is deceived into a surrender by the cardinal Granvelle, 206.

Sauvage, a Fleming, made chancellor of Castile by Charles, on the death of Ximenes, iii. 217. his extortions, ibid.

Savona, is fortified, and its harbour cleared, by the French, to favour its rivalship with Genoa, iv. 15.

Savoy, Charles, duke of, marries Beatrix of Portugal, sister to the emperor Charles the fifth, iv. 86. the cause of Francis's displeasure against him, 87. his territories overrun by the French troops, 88. Geneva recovers its liberty, ibid. his situation by the truce at Nice, between the emperor and Francis, 113. is besieged at Nice by the French and Turks, 189.

Savoy, Emanuel Philibert, duke of, appointed by Philip of Spain to command his army in the Low Countries, v. 109. invests St. Quentin, ibid. defeats Dandelot in an endeavour to join the garrison, 111. but does not hinder him from entering the town, ibid. defeats the constable Montmorency, and takes him prisoner, 112. is graciously visited in the camp by Philip, 113. takes St. Quentin by assault, 115. assists Montmorency in negotiating peace between Philip and Henry, 136. marries Henry's sister, Elizabeth, 150.

Saxons, why so many traces of their laws, language, and customs, to be found in England, v. 181. inquiry into their laws for putting an end to private wars, 264.

Saxony, elector of, appointed joint commander of the army of the protestant league, with the landgrave of Hesse, iv. 256. their characters compared, ibid. opposes the landgrave's intention of giving battle to the emperor, 259, 260. his electorate seized by Maurice, 265. the army of the league disperse, 270. recovers Saxony, 273. is amused, by Maurice with a negotiation, 274. raises an army to defend himself against the emperor, 297. is irresolute in his measures, 298. Charles passes the Elbe, 299. is attacked by the imperialists, 301. is taken prisoner and harshly received by the emperor, 302, 303. is con-

demned to death by a court-martial, 305. his resolution on the occasion, 306. is induced by regard to his family to surrender his electorate, 308. refuses the emperor's desire of his approving the 'Interim,' 336. the rigour of his confinement increased, 336, 337. is carried by the emperor with him into the Netherlands, 340. is released by the emperor on Maurice's taking arms against him, but chooses to continue with the emperor, 398. obtains his liberty after the treaty of Passau, v. 2.

Saxony, George, duke of, an enemy to the reformation, iv. 125. his death an advantage to the reformation, ibid. the protestant religion established by Henry duke of, ibid. Henry is succeeded by his son Maurice, 191. his motives for not acceding to the league of Smalkalde, ibid. marches to the assistance of Ferdinand in Hungary, ibid. joins the emperor against the protestants, 251. See Maurice.

Schertel, Sebastian, a commander in the army of the protestant league, his vigorous commencement of hostilities, iv. 254, 255. is injudiciously recalled, 255. is expelled from Augsburg on the dispersion of the protestant army, 271.

Science, the revival and progress of, how far instrumental in civilizing the nations of Europe, iii. 65. a summary view of the revival and progress of, in Europe, v. 299.

Scotland, James the fifth of, married to Mary of Guise, dutchess-dowager of Longueville, iv. 119. death of James, and accession of his infant daughter Mary, 184. Mary contracted to the dauphin of France, 366. the marriage celebrated, v. 129, 130. Mary assumes the title and arms of England on the death of Mary of England, 146. included in the treaty of Chateau Cambresis, 149. alteration in the conduct of England toward, 164.

Sects in religion, reflections on the origin of, iv. 53, 54.

Segovia, an insurrection there, on account of their representative Tordesillas voting for the donative to Charles the fifth, iii 324. is killed by the populace, ibid. the insurgents there defeat Ronquillo, sent to suppress them by cardinal Adrian, 325, 326. surrenders after the battle of Villalar, 346.

Selim the second, sultan, extirpates the mamalukes, and adds Egypt and Syria to his empire, iii. 222. considered as formidable to the European powers, ibid.

Sforza, Francis, the foundation of his pretensions to the dutchy of Milan, iii. 128. is murdered by his uncle Ludovico, ibid.

Sforza, Ludovico, his private views in engaging Charles the eighth of France to invade Italy, iii. 97. See Charles the eighth. murders his nephew Francis, and seizes Milan, 128. is stripped of his dominions by Louis the twelfth of France, and dies in prison, 128, 129.

Sforza obtains of Charles the fifth the investiture of Milan, iii. 403. forfeits the dutchy by his intrigues with Morone, 407. joins in a league against Charles for the recovery of Milan, 427. is forced to surrender Milan to the imperialists, 432. obtains again of the emperor the investiture of Milan, iv. 29. enters into a private treaty with Francis, 81. Merveille, Francis's envoy, executed for murder, 82. death of Sforza, 90.

Shipwrecks, the right of, lords of manors claim to, whence derived, v. 305.

Siena, the inhabitants of, implore the assistance of the emperor Charles the fifth, to defend them against the nobles, v. 12. the imperial troops endeavour to enslave them, 13. regain possession of their city, 14. repulse an attack of the Germans, 23. are besieged by the marquis de Marignano, 47. the commander, Monluc, repulses the assaults vigorously, ibid. the town reduced by famine, 48, 49. numbers of the citizens retire, and establish a free government at Monte Alcino, 49. the remaining citizens oppressed, ibid. and flock to Monte Alcino, 50. is granted by the emperor to his son Philip, ibid. the investiture given by Philip to Cosmo de' Medici, 121.

Sieverhausen, battle of, between Maurice of Saxony and Albert of Brandenburg, v. 18.

Silk, the rarity of, and the high price it bore in ancient Rome, remarked, v. 308. the breeding of silk-worms, when introduced into Greece, 309.

Sion, cardinal of, his scheme for weakening the French army in the Milanese, iii. 312. leaves the imperial army to attend the conclave on the death of Leo the tenth, 314.

Slanes, letters of, in the law of Scotland, what, v. 279.
Slaves, under the feudal policy, their wretched state, v. 209. oblati or voluntary slaves, the several classes of, 251.
Smalkalde, the protestants enter into a league there for their mutual support, iv. 37. the league renewed at a second meeting there, 40, the league of, renewed for ten years, 66. a manifesto, refusing to acknowledge a council called by the pope, 122. the king of Denmark joins the league, 123. the princes of, protest against the authority of the imperial chamber, and the recess of the diet at Nuremberg, 193. publish a manifesto against the proceedings of the council at Trent, 226. are alarmed at the proceedings of the emperor, ibid. a want of unity among the members, 227. the views of the elector of Saxony, and the landgrave, explained, 228. appear at the diet of Ratisbon by deputies, 241. their deputies protest against the council of Trent, ibid. their deputies, alarmed at the emperor's proceedings and declarations, leave the diet, 243. the emperor leagues with the pope against them, ibid. prepare to resist the emperor, 247. are disappointed in their applications to the Venetians and Swiss, 247, 248. as also with Henry the eighth and Francis, 249. assemble a large army, 250. are put under the ban of the empire, 253. declare war against the emperor, 254. hostilities begun by Schertel, ibid. they recall him, 255. the elector of Saxony and landgrave of Hesse appointed joint commanders of their army, 256. the characters of the two commanders compared, ibid. their operations distracted by this joint command, ibid. cannonade the emperor's camp, 260. make overtures of peace to the emperor, 268. their army disperse, 270. the elector of Saxony reduced, 302. the landgrave deceived and confined, 313, 314. their warlike stores seized by the emperor, 318. See Maurice.
Society, civil, the rude state of, under the feudal establishments after the downfal of the Roman empire, iii. 16. the influence of the crusades on, 23. how improved by the establishment of municipal communities, 27. the effects the enfranchisements of the people had on, 30. private wars how destructive to, 40. these intestine hostilities, how suppressed, 41, 42. the administration of justice improved by the prohibition of judicial combats, 42. the growth of royal courts of justice, in opposition to the barons' courts, 55. how advanced the revival of the Roman law, 59. the effects of the spirit of chivalry in improving, 62. the revival of commerce and its influences, 69, 70.
Solyman, sultan, his character, iii. 171. the magnificent ascends the Ottoman throne, 249. invades Hungary and takes Belgrade, 320. takes the island of Rhodes, 321. defeats the Hungarians at Mohacz, 448. his successes, and the number of prisoners he carried away, ibid. besieges Vienna, iv. 28. enters Hungary again with a vast army, but is forced to retire by the emperor Charles, 43, 44. takes Barbarossa, the pirate, under his protection, 70. concludes an alliance with Francis, king of France, 110. prepares to invade Naples, ibid. protects Stephen, king of Hungary, and defeats Ferdinand, 163. seizes Hungary for himself, 164. overruns Hungary again, in fulfilment of his treaty with Francis, 188. concludes a truce with the emperor, 239. loses Transylvania, 379. ravages the coast of Italy, 407. v. 15. carries a mighty army into Hungary, iv. 408. reestablishes Isabella and her son in Transylvania, v. 24. his violent attachment to his concubine Roxalana, 25. is prevailed on to declare her a free woman, 26, formally marries her, ibid. is rendered jealous of the virtues of his son Mustapha by the arts of Roxalana, 27, 28. orders him to be strangled, 30. orders the murder of Mustapha's son, 31.
Spain, a summary view of its situation at the commencement of the fifteenth century, iii. 80. the power of the crown of, how extended by Ferdinand, 93. national infantry established in, 104. is conquered by the Vandals, 129, and after by the Moors, 130. the empire of the Moors in, how weakened, ibid. rise of the kingdoms of Castile and Aragon, 131. their union into the Spanish monarchy, ibid. the ancient customs still retained amidst all its revolutions, ibid. peculiarities in its constitution and laws remarked, 133. See Aragon and Castile. various causes which contribute to limit the regal power in, 140. the cities of, how they attained their consideration and power, 141. the schemes of Ferdinand and Isabella to exalt the regal power, 143. the grand

masterships of the three orders annexed to the crown, 144. the association of the holy brotherhood, on what occasion formed, 146. the tendency of this association to abridge the territorial jurisdictions of the barons, ibid. the state of, at the death of Ferdinaud of Aragon, 197. Charles, king of, aspires to the imperial crown on the death of Maximilian, 221. is elected emperor, 231. reflections of the Spaniards on that event, 230. Charles appoints viceroys, and departs for Germany, 237. insurrections there, 323. a view of the feudal system in, 327, 328. an account of the confederacy termed the holy junta, 328. causes which prevented an union of the malecontents in the respective provinces, 352. the moderation of Charles towards them on his arrival, 353. instance of the haughty spirit of the grandees, iv. 129. is invaded by the dauphin, 179. the dominions of, resigned by Charles to his son Philip, v. 86. the arrival of Charles, and his reception there, 100. the place of his retreat described, 102. the regal power in, how enlarged by Charles, 156. the foreign acquisitions added to, ibid. See Aragon, Castile, Galicia, Valencia, Cortes, Germanada, and Holy Junta. the cruel devastations made by the Vandals in the invasion of that province, 182. when the cities of, acquired municipal privileges, 243. the long continuance of the practice of private wars there, 266. the total annual revenue of the nobility in the time Charles the fifth, 326. an inquiry into the origin of communities of free cities in, 327.

Spires, diet of, its proceedings relative to the reformation, iii. 449. another diet called there by the emperor, iv. 32. another diet at, 195. recess of, in favour of the protestants, 198.

Spiritual censures of the Romish church, the dreadful effects of, iii. 280.

St. Disier, in Champagne, invested by the emperor, iv. 204. is obtained by the artifice of cardinal Granvelle, 206.

St. Jago, the military order of, when, and on what occasion, instituted, v. 38.

St. Justus, monastery of, in Placentia, is chosen by the emperor Charles the fifth for his retreat after his resignation, v. 102. his situation described, ibid. his apartments, ibid.

St. Quentin, invested by the Spanish troops, and defended by admiral Coligni, v. 109, 110. Dandelot defeated in an endeavour to join the garrison, 111. but enters the town, ibid. Montmorency defeated by the duke of Savoy, 112. the town taken by assault, 115.

Standing armies. See Armies.

States-general of France, causes which rendered their authority imperfect, iii. 149. when they lost their legislative authority, 150. when first assembled, v. 345. the form of proceeding in them, 346.

Stephen, earl of Chartres and Blois, his account of the progress of the crusaders, v. 223.

Stiernhöök, his account of the ancient Swedish law of satisfaction for words of reproach, v. 270.

Strangers, in what light considered, and how treated during the middle ages, and under the feudal policy, v. 304.

Strozzi, Peter, some account of, v. 45. is intrusted with the command of the French army in Italy, ibid. is defeated by the marquis de Marignano, 46, 47.

Suabia, an insurrection of the peasants against the nobles, there, iii. 418. they publish a memorial of their grievances, 419. the insurgents dispersed, 420. the protestant religion suppressed there by the emperor Charles the fifth, iv. 369.

Suffolk, duke of, invades Picardy, penetrates almost to Paris, but is driven back, iii. 365, 366.

Sugar-canes when first brought from Asia into Europe, and thence carried to America, v. 309.

Sultans, Turkish, their despotic power, iii. 168. how, nevertheless, limited, 169.

Superstition, its influence in the legal proceedings during the middle ages, iii. 45.

Surrey, earl of, created high admiral to the emperor Charles the fifth, iii. 319. obliged to retire out of Picardy by the duke de Vendôme, 320.

Sweden, a summary view of the revolutions in, during the sixteenth century, v. 176.

Swiss, the superior discipline of their troops in the fifteenth century, iii. 102. teach other nations the advantages of infantry over cavalry, 103.
Switzerland, the cantons of, espouse the pretensions of Charles the fifth to the imperial crown, iii. 225. commencement of the reformation there by Zuinglius, 265, 266. the regulation under which they hire out their troops, 312. the precipitate battle insisted on by their troops under Lautrec, 316, 317.
Syria, how and by whom added to the Ottoman empire, iii. 222.
Tacitus, his account of the ancient Germans compared with that of Cæsar, v. 189.
Tenures, feudal, the original of, iii. 12. See Feudal System and Land.
Termes, maréchal de, governor of Calais, takes Dunkirk by storm, v. 131. engages the count of Egmont, and is defeated by the accidental arrival of an English squadron on the coast, ibid. is taken prisoner, 132.
Terouenne, taken and demolished by the emperor Charles the fifth, v. 21.
Tetzel, a dominican friar, his shameful conduct in the sale of indulgences in Germany, iii. 252, 253. his form of absolution, and recommendation of the virtues of indulgences, 252, k. his debauched course of life, 253. publishes theses against Luther, 257.
Teutonic order, a character of, iii. 424. conquer the province of Prussia, 425. their grand master, Albert, made duke of Prussia, ibid.
Theatines, the order of, by whom founded, v. 70.
Theology, scholastic, the first literary pursuits at the revival of learning in Europe, iii. 67.
Thionville, in Luxembourg taken by the duke of Guise, v. 130, 131.
Thuringia, an insurrection of the peasants there, against the nobility, iii. 420. the fanatical notions inspired into them by Thomas Muncer, 420, 421. their disorderly army defeated, 422, 423.
Toledo, insurrection in, at the departure of Charles the fifth for Germany, iii. 323. the cathedral of, stripped of its riches to support the army of the holy junta, 340, 341. Padilla's letter to, at his execution, 346, Note. is instigated to continue in arms by Padilla's wife, 347. is reduced, 348.
Toledo, Ludovico di, nephew to Cosmo de' Medici, sent by his uncle to negotiate with Philip the second of Spain, for the investiture of Siena, v. 120.
Toledo, don Pedro de, viceroy of Naples, oppresses the Neapolitans, v. 14. and occasions the Turks to ravage the coast of Naples, 15.
Toleration, reflections on the progress of, in Germany, v. 64. why mutually allowed among the ancient heathens, ibid. how the primitive christians became averse to, 65.
Tomorri, Paul, a franciscan monk, archbishop of Golocza, is made general of the Hungarian army against Solyman the magnificent, and is defeated by him, iii. 448.
Tordesillas, the residence of queen Joanna, the confederacy of malecontents called the holy junta, removed thither, iii. 330. the queen taken there by the conde de Haro, 339.
Tordesillas, one of the representatives of Segovia, killed by the populace, for voting the donative to Charles the fifth, at the cortes assembled in Galicia, iii. 324.
Transylvania is surrendered to Ferdinand, king of the Romans, by queen Isabella, iv. 379.
Tremouille, la, drives the English under the duke of Suffolk out of Picardy, iii. 366.
Trent, the council of, summoned, iv. 193. prorogued, 194. again summoned, 215. is opened, 224, 225. declares the apocryphal scriptures canonical, 236. establishes the authority of the church traditions, 236, 237. the council, on rumours of an infection in the city, is translated to Bologna, 323. Henry the second of France protests against the council, 368. the council breaks up on the approach of Maurice of Saxony, 393. historical remarks on this council, 399. characters of its historians, 400.
Trent, cardinal of, sent by the emperor Charles the fifth to conclude an alliance with the pope, iv. 242. the nature of this treaty, 243.
Truce of God, an account of, v. 259.

Tunis, the means of its coming under the power of Barbarossa, traced, iv. 71, 72. the emperor and other christian powers unite to expel Barbarossa, and restore Muley-Hascen, 73. is taken by the emperor, 77. Muley-Hascen restored, and his treaty with Charles, 78, 79.
Turkey, origin of its government, iii. 167. the despotic genius of this government, 168. no hereditary nobility in, 169. the authority of the sultans, how checked, ibid. origin of the janizaries, 170. becomes formidable to the christian princes, 172.
Tuscany, a review of the state of, during the sixteenth century, v. 175.
Ulm, the government of that city violently altered, and its reformed ministers carried away in chains, by the emperor Charles the fifth, iv. 339.
Union of the Aragonese nobles to control the undue exercise of the regal power explained, v. 320. this privilege abrogated by Peter the fourth, 321.
United Provinces of the Netherlands, a brief view of their revolt against the dominion of Spain, v. 175, 176.
Universities, the first establishment of, in Europe, v. 301.
Urbino, restored by pope Adrian to Francesco Maria de Rovere, iii. 354.
Valencia, an insurrection in, iii. 234. the people there greatly oppressed by the nobles, ibid. the nobles refuse to assemble the cortes, except the king is present, 235. Charles authorizes the people to continue in arms, ibid. they expel the nobles, ibid. associate under the 'germanada,' and appoint their own magistrates, ibid. don Diego de Mendoza, conde de Melito, appointed regent on the departure of Charles for Germany, 237. the germanada refuse to lay down their arms, 349. defeat the nobles in several actions, 350. are at length routed by the conde de Melito, 351. the moderation of Charles towards the insurgents on his arrival, 353.
Valentinois, dutchess of. See Diana of Poitiers.
Valladolid, the first public entry of Charles the fifth into that city, iii. 215. the inhabitants rise, burn Fonseca's house, and fortify the town, 327. surrenders after the battle of Villalar, and dissolution of the holy junta, 346.
Vandals, their cruel devastations in the invasion of Spain, v. 182. the havoc made by them in Africa, 183. See Goths.
Vassals, under the feudal system, a view of their slavish condition, iii. 14, 35. how they obtained enfranchisement, ibid. how anciently distinguished from freemen, v. 199. their wretched state under their feudal masters, 209.
Vaucelles, treaty of, between Charles the fifth, and Henry the second of France, v. 88.
Vendôme, duke of, his plan of operations in opposing the progress of the invasion of Picardy by Henry the eighth, iii. 320. obliges him to retire, ibid.
Venice, the long duration of its civil constitution, and its flourishing state at the time of the league of Cambray, iii. 105. its possessions dismembered by the confederates, 107. dissolves the confederacy, ibid. its rise and progress, 119. defects in its constitution, 120. the excellency of its naval institutions, 121. its extensive commerce, ibid. the republic of, incline in favour of the pretensions of Francis the first of France to the imperial crown, 225. their views and apprehensions on the approaching rupture between the emperor Charles the fifth and Francis, 241. leagues with the emperor against Francis, 356. a final accommodation between, and the emperor, v. 29. refuses to enter into the league of the Italian states, formed by the emperor, 47. a review of the state of that republic during the sixteenth century, 172.
Verrina, the confidant of the count of Lavagna, encourages him in his scheme of overturning the government of Genoa, iv. 278. is protected by Francis, on the ruin of that conspiracy, 292.
Vielleville, the French governor of Metz, detects father Leonard's conspiracy to betray the city to the imperialists, v. 54. executes the conspirators, 56.
Vienna is besieged by sultan Solyman the magnificent, iv. 28.
Villalar, battle of, between Padilla and the conde de Haro, iii. 344.
Villena, marquis de, his spirited reply to the request of the emperor to lodge Bourbon in his palace, iii. 409.
Visconti, rise of the family of, in Milan, iii. 126.

Wallop, sir John, joins the emperor Charles the fifth at the siege of Landrecy, with a body of English troops, iv. 188.
War, a comparison between the manner of carrying on, by barbarous and by civilized nations, iii. 8. how rendered feeble in its operations by the feudal policy, 15. the profession of arms, the most honourable in uncivilized nations, 61. the rise of standing armies traced, 84. by what means standing forces became general, 101. the superiority of infantry in, how taught, 102. the method of carrying on, in Europe, how improved at this period from the practice of earlier ages, 365.
Wars, private, for the redressing personal injuries, under the feudal policy, an inquiry into, iii. 39. methods taken to abolish this hostile practice, 41. judicial combat prohibited, 52. inquiry into the sources of these customs, v. 253. who entitled to the privileges of exercising, 254. on what occasions undertaken, 255. who included, or bound to engage in these disputes, ibid. who excluded from undertaking, 256. the cruel manner of prosecuting them, 256, 257. a chronological account of the expedients made use of to suppress them, 257. 'truce of God,' an account of, 259. 'brotherhood of God,' an account of, 261. 'royal truce,' what, ibid. Saxon laws of England, for putting an end to them, 264, 265. the obstinate attachment of the Spaniards to this practice, 266. the calamities occasioned in Germany by, 267.
Wartburg, Martin Luther concealed there by the elector of Saxony, iii. 294.
Welsh, ancient, a madman, a stranger, and a leper, might be killed with impunity by them, v. 305.
Wentworth, lord, governor of Calais, remonstrates in vain with the English privy council to provide for its security, v. 124. is attacked by the duke of Guise, and forced to capitulate, 125.
Willa, widow of duke Hugo, extract from her charter of manumission granted to Clariza, one of her slaves, v. 249.
Willermus, archbishop of Tyre, his account of Constantinople, v. 226.
Wittemberg, invested by the emperor Charles the fifth, and defended by Sybilla of Cleves, wife to the elector of Saxony, iv. 304.
Wolsey, cardinal, his rise, character, and influence over Henry the eighth of England, iii. 243, 244. receives a pension from Francis the first of France, 245. and from the emperor Charles the fifth, ibid. detached from the French interest by the latter, 246. inclines Henry to join the emperor against Francis, 297. sent by Henry to Calais, to negotiate an accommodation between the emperor and Francis, 306. has an interview with Charles at Bruges, and concludes a league with him on the part of Henry, against France, 307. meditates revenge against Charles, on his second disappointment of the papacy, by the election of Clement the seventh, 363. obtains of Clement a legatine commission in England for life, 364. negotiates a league with Francis against the emperor, iv. 2.
Worms, a diet called there by Charles the fifth, to check the progress of the reformers, iii. 249. proceedings of, 291. Martin Luther cited before it, 292. refuses to retract his opinions, 293. an edict published against him, ibid. diet at, opened, iv. 215.
Wurtemburg, Ulric, duke of, why expelled his dominions, iv. 63. recovers his dominions by the assistance of Francis, king of France, and receives the protestant religion, 64.
Wyat, sir Thomas, raises an insurrection in Kent against queen Mary of England, on account of the Spanish match, v. 36. is subdued and punished, ibid.
Ximenes, archbishop of Toledo, adheres to Ferdinand of Aragon, in his dispute with the archduke Philip concerning the regency of Castile, iii. 182. espouses Ferdinand's claim to the regency of Castile on Philip's death, 190. conquers Oran, and other places in Barbary, for the crown of Castile, 191. appointed regent of Castile, by Ferdinand's will, until the arrival of Charles the fifth in Spain, 197. his rise and character, 198. admits the claim to the regency of cardinal Adrian, sent with that commission by Charles, and executes it jointly with him, 200. takes the infant, don Ferdinand, to Madrid, under his own eye, ibid. procures Charles, who assumed the regal title, to be acknowledged by the Castilian nobility, 201. schemes to extend the regal prerogative, 202.

depresses the nobility, 202, 203. frees the king from the feudal limitations, and establishes a regal army to check the barons, 203. suppresses a mutiny headed by the grandees, 204. resumes the grants of Ferdinand to his nobles, ibid. his prudent application of the revenue, 205. his bold assertion of his authority to the discontented nobles, 206. other associates in the regency, appointed at the instigation of the Flemish courtiers, 207. retains the superior management, ibid. defeats John D'Albret's invasion of Navarre, 208. dismantles all the castles there, except Pampeluna, which he strengthens, ibid. the troops sent by him against Barbarossa defeated, and his equanimity on that occasion, 209. alarmed at the corruption of the Flemish court, he persuades Charles to visit Spain, 210. falls sick on his journey to meet Charles at his arrival, 214. his letter of counsel to Charles, ibid. requests an interview, ibid. the ingratitude of Charles to him, 215. his death, ibid. his character, ibid. reverence paid to his memory by the Spaniards, ibid.

Zamora, bishop of, raises a regiment of priests to defend Tordesillas, for the holy junta, which is forced by the conde de Haro, iii. 339.

Zuinglius; attacks the sale of indulgences at Zurich in Switzerland, iii. 266.

THE END OF THE FIFTH VOLUME.

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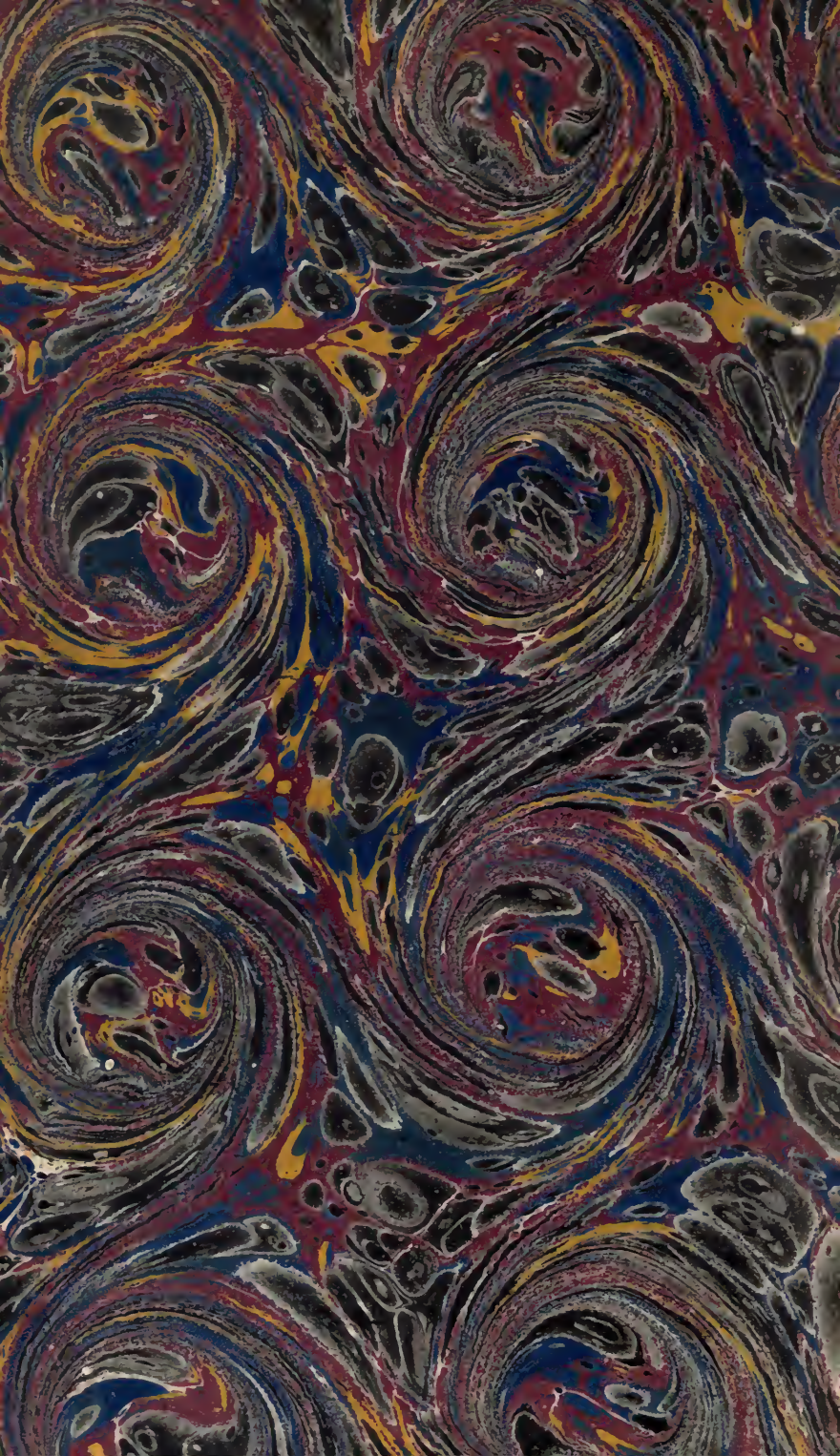

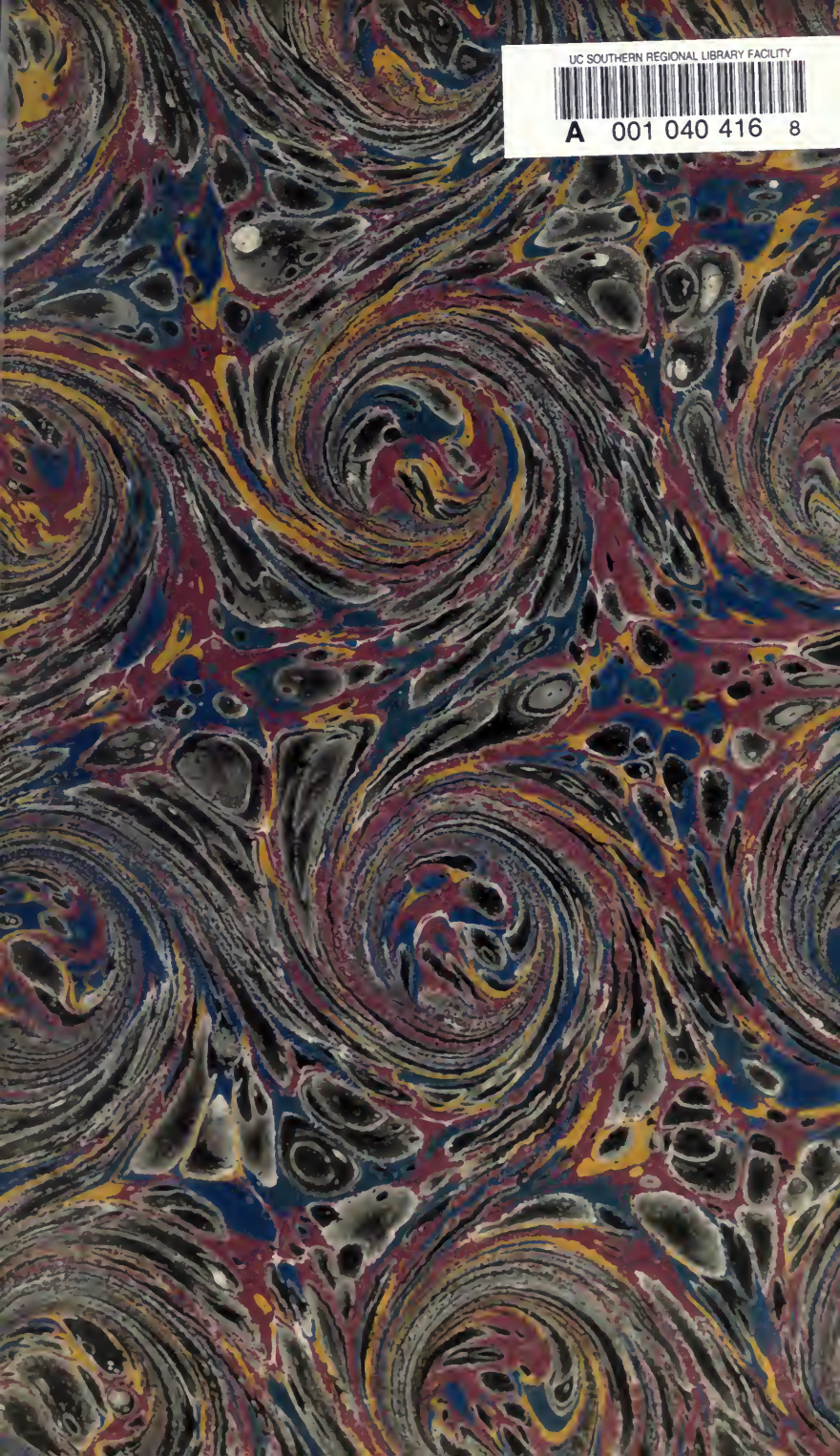
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